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"HATE STANDS WITHOUT AND HORROR SITS WITHIN."

—*Drayton's Warrs of the Barons.*

BY

THOMAS JOHN de' MAZZINGHI,

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10th September, 1887.

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SANCTUARIES.

CHAPTER I.

ORIGIN, NATURE, AND PROGRESS OF THE INSTITUTION.

The subject which we are about to consider has employed the pens of many well-known writers, whose works are most of them easily accessible. What they have said has been said at length, and said well. I do not propose to go over quite their ground, however attractive the structures which they have reared, or however important and interesting the History which they have illustrated. The inquirer will find that material ready to serve him in the writings of men of exceptional competence in Scriptural Archæology, down from Josephus and Father Sarpi, and Archbishop Potter and Bingham, to the writers of separate papers in our various Archæologia, and to the Summaries in Law Dictionaries and the Dictionaries of Biblical and Classical Antiquities.

This institution of sanctuaries has its root in a sentiment common to all humanity, *i.e.*, that a peculiar sacredness attaches to particular places, as Tacitus expressly tells us in one of his two famous treatises. Thus, our homes and our countries are sacred to us—and a

battle field,—a river-side,—a pool of water,—a cave,—a grove,—a grave, have, by being associated with circumstances pregnant with human emotion, become amongst different races objects of undying veneration, and so much so as to exercise an influence upon not merely the sentiments, but even the actions of the most ignorant and most brutal of their descendants; and so too, as we shall see, even places in themselves least holy have come by the Charters of Princes to be invested with privileges of a similar nature to those which the Church assigned to its sanctuaries.

Schiller has in his—and perhaps Germany's—greatest drama, *William Tell*, introduced a dialogue between a father and son. The son is the child of William Tell: he is prattling with his father. The scene of this dialogue is laid amidst the sublimest scenery, in that stupendous country where—

> "Mont Blanc is the monarch of mountains,
> And crowned long ago
> With a mantle of mist, and a wreath of storms,
> And a diadem of snow!"

A highly suggestive country. We see the giant mountains, and we think of the glacier and the avalanche. We think of the *cantonniera* of these places, roughly prepared to shelter travellers from any sudden war of the elements. No doubt the child had his mind fully impressed with all the ordinary accompaniments of such scenery: he had heard of many a moving accident connected with them,

and of many a terrible disaster, and perhaps of many an unlooked-for escape from a frightful and imminent death. What is the child saying to his parent? He is putting to him, with all the *naiveté* of childhood and innocence, a simple and natural question: "Father, are there any countries where there are no mountains?" Now, the child was not thinking of mountains alone; he was thinking of the firm or missed step on mountains, of the peril of the avalanche, and of salvation by the *cantonniera*. I pass over the answer which William Tell makes to his son, without telling in what manner and in what words the Swiss patriot is pictured to us as giving the child his elementary lesson in physical geography.

There were, and are, we know, roughly built shelters in Switzerland from storm and avalanche, that may have saved, in the revolution of ages, thousands of labourers or wayfarers in those Alpine regions. Let me refer now to another class of *shelters*, but these not from elemental warfare, but from "furious" animals. The traveller, in the campagna of Rome, comes here and there upon small pieces of ground staked in, and forming squares, strongly fenced on all sides with huge logs of wood, some shaped and some unhewn, resembling, indeed, pens for cattle, permitting entry, however, through uprights to a body of human dimensions. To my question, "What, then, are these?" the answer was: "The wayfarer who, traversing on foot the campagna, and sees convoys of wild cattle driven down from the Apennines, takes refuge

here until the herd rushes by. That is the intent, and that the use."

The Greek dramatist, Euripides, makes one of his characters say—

> "Beasts have their rocky retreats to fly to—
> Slaves have their altars;"

but whether the object dreaded be the wrath of the elements, the fury of wild animals, or the fierce onslaught of either man single in his attack, or of men herded together in some fell purpose of anger and revengeful ferocity, such institutions have everywhere existed. A late instance—the latest which I have seen. A few years after Malta had fallen into the power of this country, and had received a British garrison—about 1807 I think—a young British officer, in his bright red uniform and white trousers, was pacing slowly along the streets of the town, when he saw a butcher coming towards him driving a pig. The pig—it does not appear why—made for the strange uniform, and ran between the officer's legs and soiled his trousers, who then not very unnaturally gave the pig a kick. What first took place after this I know not, but it is certain that the butcher mortally stabbed the officer with his knife, and then, pursued by the soldiery, took sanctuary in the nearest church. What came of this does not very well appear, but the British had promised, on taking Malta, to respect its laws, and sanctuary was one of these! I simply allude to this striking event, which really occurred, to illustrate my subject, and

to bring me nearer to it. It is not only in the physical world that storms, hurricanes, and whirlwinds exist, and during which shelter is sought: there are phenomena in the nature of man more fearful, more appalling: there is the storm of headstrong anger uncontrolled until it becomes uncontrollable: there is the hurricane of revenge, the whirlwind of sensual passion, and the avalanche of ambition. What is our safeguard from these? The law, some will say. Law is sometimes not only inapplicable, but in early ages has been found positively unjust. Law produced a system of positive rules so inapplicable to some cases, that a strange paradox was called into existence and sanctioned *by the Law itself*, and that not merely by the Law of *the State*, but by the Law of *the Church*, and this was called the "dispensing power." Even the ancient Jews, we are told, preferred the trial by the shekel or weight of the sanctuary.* The Saxons had their Courts presided over by Thanes, but the Bishops sat at their side, and for many centuries Churchmen on the Chancery Bench tempered the harshness of the Norman Laws by principles drawn, now from the Civil or the Canon Law, and now from mere equity and good conscience. Nor this alone, for the supreme head of the State exercised at will the sovereign power of par-

* To try anything by the weight of the sanctuary was to examine it by a just and equal scale; because among the Jews it was the custom of the Priests to keep stone weights to serve as standards for regulating all weights by, though these were not all different from the royal or profane weights.

doning offences after conviction, and of dispensing mercy.

Sanctuarium—among the Jews also called Sanctum Sanctorum—or Holy of Holies, was the holiest and most retired part of the Temple of Jerusalem, in which the Ark of the Covenant was preserved, and into which none but the High Priest was allowed to enter, and that only once a year, to intercede for the people. Some distinguish the Sanctuarium from the Sanctum Sanctorum, and maintain that the whole Temple was called the Sanctuary.

Sanctuary, in the Romish Church, is also used for that part of the church in which the altar is placed, encompassed with a rail or balustrade.

In Greece, some pretend that the first asylum or sanctuary had its origin from an oracle of Jupiter Dodonæus, who commanded the Athenians, to grant their lives to all those who fled for refuge to Mars' Hill, (Areopagus,) or to the altars of the goddesses. But others say the first asylum was built at Athens by the Heraclidæ, and was a refuge for those who fled from the oppression of their fathers. These asyla were very numerous in the time of Pausanias, who writes that Neoptolemus, the son of Achilles, was slain near the altar of Apollo at Delphi, as a just punishment for having killed Priam, King of Troy, although he had fled to the altar of Jupiter for refuge. The most famous of these asyla was that of Diana at Ephesus. Strabo tells us that, by licence from different princes, it had, at different times, different extents of privileged ground assigned to it.—*(See Appendix.)*

That the laws of the Anglo-Saxon Kings should have left very remarkable intrinsic evidence behind them that the times were times of violence is no matter for wonder, and yet few words recur there so constantly as the two little Teutonic equivalents for the modern word "peace," "grỳth and fryth." We find them, it is true, there rarely uncompounded, and, when compounded, almost invariably compounded with words denoting either the Church or the King. Thus we have the Cyric "grỳth" or the Conning's "fryth." The Church's Peace—the King's Peace! The Peace of the King! The Peace of the Church! Not the peace of the King which, in well governed lands, preserves the life, property, liberties, and reputations of us all;—not the peace of God which passeth all understanding; but a peace, alas! terribly suggestive of blood and violence—of the lawlessness of man in a rude epoch of society, in an age the very opposite to one of Peace! Suggestive, too, of a check imposed upon the progress of crime, and a barrier set to the impulses of human passion.

Mr. Sleigh, who in his History of Leek, remarks that this word "fryth" signified also amongst the Saxons a "wood," for they held several woods to be sacred and made them sanctuaries, thus accounts for a quarter of Leek itself having been styled "Frith"—viz., Leek Frith. Now this view of Mr. Sleigh's is confirmed by what we know of the habits of the ancient Germans generally, from their great authority, Tacitus, who expressly speaks

of not only lakes and fountains, but of woods having been held sacred by them; woods, too, with the ancient inhabitants of this country being used not only as homes, but as places for defence and for religious observances, would readily be invested with a triple sacredness, and in every respect come to correspond to the places pre-eminently entitled to be regarded as abodes of peace, as asylums in fact, and, therefore, as "fryths" and as sanctuaries.

This word "fryth," therefore, etymologists tell us, came in a secondary sense to be used as designating a wood—a place which gave peace, and of this early English writers afford many examples; but in the earlier period the expressions "frithstol," "frithstow," and "frith" soon were all used to denote sanctuaries. Sanctuaries! We call them so, but the word is very inappropriate. It is not the designation used by our Anglo-Saxon ancestors, or by the poets and historians of classical antiquity, or by the Christianized Roman Jurists, or, I believe, by any of the nations which boast a Latin origin. On the contrary, their word is at once suggestive here of the violence of ages not Christian, or only in a transitional state, when revenge had not ceased to be virtue, and each man, though he claimed in his own case the improvised judgment seat, snatched himself also the rash axe of the headsman! He was, however, necessarily checked in a headlong pursuit by an insurmountable barrier, when he found his quarry at last in a place

whence he could not be dragged, or where he could not be even touched.

Asylums, some may say, are for the poor, the infirm, the blind, the mad! Yes; but that is a departure of our own from the original sense, still retained on the Continent, where, as in the language of Justinian, and of the Greek Poets, an asylum (derived from the Greek) signifies a place from which a fugitive cannot be dragged,* or a place where he cannot be injured. Alfred's law, ed: Thorpe, vol. 1, p. 64, adopts the former derivation. The phraseology of the Anglo-Saxons was not illogical. Their laws distinguished, as I have said, between two kinds of peace—the peace of the Church and the peace of the King; the Cyric fryth or gryth, and the Conning's fryth or gryth. The canons of the Church, like the laws of the Anglo-Saxons, described each, and annexed penalties to infractions. This Saxon expression, "King's peace," has survived more than a thousand years, and is still appropriately in use when public offences and crimes are spoken of; but the other expression, the "Church's

* Das wort *"asulon* wird bald von *a* und *súrein*, gleichsam ein Ort, aus dem Niemand herausgezogen, fortgebracht werden darf, abgeleitet, bald von *a* und *suláo* oder vielmehr *súle*, ein Ort der nicht beraubt werden kann,, ein unverletzlicher, im Götterschutz stehender. Die letztere Ableitung scheint nicht nur die etymologisch einfachere, sondern die auch dem Sinne des Worts mehr entsprechende zu sein. Denn nach der ersteren würde Jemand zwar nicht vom heiligen Orte herausgezogen, aber wol daselbst verletzt werden können. Die letztere schliesst Beides aus und erbringt somit die dem Begriffe entsprechende, vollkommene Unverletzlichkeit.—*See Bulmerincq Das Asylrecht, p. 32 n.*

peace," is obsolete amongst us, and although to a certain extent the law upholds it, it now finds its best safeguard in public opinion.

It is not without reason that I have dwelt upon this primitive phraseology, for the two expressions in question mark also the sources from which spring two different species of immunities—the one through the Church, introduced by Augustine, spreading and extending the traditional usages of Judaism and of Christianity, and the other through the Anglo-Saxon Kings, whose charters granted exceptional privileges to favored places, some not holy, but the very reverse of holy. In general, it is true, the English sanctuary could claim only the peace of the Church, and this procedure came at an early date to be regulated by a fixed system of rules, having sometimes Papal and also parliamentary sanction. But in the case of the great English sanctuaries, which had been favored by special Royal charters, greater privileges were created, and these gave frequent rise to questions as to their extent, to decide which recourse had to be made to the charters themselves.

The Saxon times in this country represent the infancy of the institution, the Plantagenet times its manhood, and the Tudor epoch its age. The era of the Reformation was the period of its reform also, and the Stuart dynasty saw, after some vacillation in legislation, its abolition, except that a few places, having purely secular immunities for debtors, were suffered a little to prolong a feeble and

noxious existence. These institutions are dead, but the spirit still survives in this age, and even in this country; for why did not, in recent times, Russia claim from us the fugitive Hartmann?—why, but that England had constituted herself, by the imperceptible march of events, and almost unconsciously, an asylum and sanctuary for State offenders, as she had also done for fugitive Sovereigns in distress.

An eminent orator, not very long ago, remarked: "It is impossible to fix a boundary that shall separate the spiritual from the temporal power." Be this as it may, the difficulty was not seen by the able translator and annotator upon the Anglo-Saxon Laws. He proceeded summarily to work—and there are the two systems, the secular and the ecclesiastical laws, divided from each other in separate volumes, yet mutually supporting each other in their fundamental principles. As to the Anglo-Saxon Laws, the Church "gryth" is first mentioned in those of King Ethelbert, who had been baptized by Augustine in the year 597, and who, according to Bede, after a reign of fifty-six years, died in 616. His laws simply imposed upon him who infringed the privilege of Church twice the fine that they attached to an ordinary breach of the peace (fryth). This Law is meagre enough; no doubt it was supplemented by others that are lost, as well as by the principle that had been already received from the Church by Christian Sovereigns down from the time, it is said, of the conversion of Constantine. Many of the subse-

quent Saxon laws enlarge upon the doctrine. Let us consider one of King Alfred's (9th century) :—

"We also ordain to every Church hallowed by a Bishop this 'fryth': If a fah-man flee to or reach one, that for seven days no one drag him out; but if anyone do so, then let him be liable in the king's 'mund-byrd' and the church's 'fryth'; more, if there, commit more wrong—if, despite of hunger, he can live, unless he fight his way out.* If the brethren have need of their church, let them keep him in another house, and let not that have more doors than the church. Let the church 'ealdor' take care that during this term no one give him food. If he himself be willing to deliver up his weapons to his foes, let them keep him 30 days, and let them give notice to his kinsmen," &c.

This law says that for seven days no one shall drag him out, so that here we have reproduced the prohibition which was embodied in one of the senses of the Greek word, which defined the right to sanctuary both in Greece and Rome—a place, as I have said, from which a man is not to be dragged. In Canute's laws the "bot" or fine paid for breach of this privilege varied in amount with the rank of the sanctuary, in a fourfold estimate, according as it occurred—in a chief minster in one of second or tertiary rank with a burial place, or in a field church having no burial place—the "bot" being 160, 120, 60, or 30 shillings in these cases respectively.

Our Anglo-Saxon ancestors, "fresh with the nerve, the new-born impulse strung," followed the teaching of St. Augustin with apparently the most implicit faithfulness.

* This is a passage which has been a stumbling block to interpreters. Thorpe suggests that by implication "buton he self ut feohte," means it would be lawful, if out of the bounds, to seize him, &c.

The doctrine and the practice of the Church once adopted, the Kings appear to have imitated the course which had been adopted as to sanctuaries by the Roman Emperors after their conversion. The rapid change introduced was very remarkable. Dodsworth, in his preface to the "Monasticon," mentions two hundred instances of Saxon Princes and Princesses who had associated themselves with religious establishments, either as founders or as brothers or sisters. The practice of sanctuaries was adopted with the rest; so that we cannot wonder at finding from the earliest laws that the system was in this island, even then, gradually assuming the same shape and development that it had done in the dominions of the successors of Constantine.

Not only the Church, but the King, as I have said, could grant sanctuary. Every church, every cemetery, all consecrated ground had it, by the general ecclesiastical law of Christendom, and the Church always claimed to be the judge of the limits of its privileges; but the compassion or piety, or policy of Sovereigns had by express charters assigned to peculiar ecclesiastical—and sometimes even secular—places, privileges as extensive as, and sometimes more extensive, than those known to the Jews or sanctioned by the Church. It was precisely in these asylums, which sprang from the fiat of Sovereigns, that the abuses arose; and, when the place had to justify its privilege before a court, a confusion arose until, by the production of the charter granting it, a way was found out of a

position of no common perplexity. We find it stated by a foreigner that England possessed more of these sanctuaries than any continental country, and he seems to affirm that the abuses were far greater here than in Italy.

In the year 1615, Pope Paul V., exasperated by some decrees of the Senate of Venice that he regarded as interfering with the so-called rights of the Church—I believe, I do not know, that a decree of the Senate curtailed the privilege of sanctuary—laid the whole of that State under an interdict. The Senate, filled with indignation, forbad the publication of the Pope's Bull, and a paper war ensued, in which the most conspicuous combatant on the one side was the celebrated Cardinal Bellarmine, whilst the decrees of Venice were defended against him with, it is said, not unequal ability by the celebrated Fra Paolo, or Father Paul or Sarpi, author of the history to which I have above referred. Now, the reasoning of the Father rendered it essential that he should consider the question of sanctuaries—and he did so in a logical order, treating of the origin, claims, abuses and limits of sanctuaries.

I mention a few dates to chronicle the sequence of events affecting sanctuaries. in England. A Statute of Edward I. regulated the procedure in application for sanctuary :—

Thus in 1378.—Lands and goods of fraudulent debtors—sanctuary men—were answerable for debts.

In 1493-1504.—Bulls of Popes authorized the arrest, in sanctuary,

of sanctuary men who had issued forth to commit robbery or murder, and granted that sanctuary men accused of high treason might be guarded by the King to prevent their escape.

These Bulls were obtained by King Henry VII., his reign being troubled by pretenders to the throne, who evaded punishment by escaping to sanctuaries. Thus King Henry obtained from Pope Innocent (VIII.) A.D. 1486, a Bull affecting the privileges of sanctuaries in England in three points:—

1.—Where a sanctuary man got out of sanctuary and committed mischief and trespass, he lost the benefit of sanctuary although he returned to it.

2.—The goods of no sanctuary men were to be protected from their Creditors.

3.—If any man took sanctuary for case of treason, the King might appoint keepers to look after him in sanctuary.

This brings us nearly to a time when the laws were greatly altered:—

Thus by the 22 Hy. 8, c. 14, a person abjuring the realm was not to leave the country, but select a sanctuary within the realm to repair to, and there remain during his natural life, and, upon his abjuration, be sworn so to do. But if he went out of that sanctuary, unless discharged by the King's pardon, and committed murder or felony, he was liable to be brought to trial for his offence.

By the 26 Hy. 8, c. 13, and 28 Hy. 8, c. 7, all persons accused of high treason were exempted from the privilege of sanctuary.—[The Papal Bull had not gone so far.]

By the 27 Hy. 8, c. 19, all sanctuary persons were to wear a badge (to be assigned by the governor of the sanctuary) openly upon their upper garment, of the compass in length and breadth of 20 inches, under pain of forfeiting all privilege of sanctuary. They were not to carry any sword or other weapon, except their meat knives, and those only at their meals. They were not to leave their lodging, except between sunrise and sunset, under penalty of forfeiting their sanctuary for the third such offence.

By the 32 Hy. 8, c. 12, the rights of sanctuary were further restrained, and the privilege was taken from all places, except parish churches and churchyards, cathedral churches, hospitals, and churches collegiate, and all chapels dedicated used as parish churches, and except Wells, Manchester, Northampton, York, Derby, and Launceston.

By the 33 Hy. 8, c. 15, the city of Westchester—*i. e.*, Chester—was to have privilege of sanctuary instead of Manchester.

By the 1 James I., c. 25, the privileges were further abridged.

By the 21 James 1., c. 28, sanctuary was abolished, *i.e.*, in 1624, almost everywhere.

By the 31, Ch. 2, c. 2, s. 10, the writ of Hæbeus Corpus might run into any County Palatine or privileged place. In London, however, persons were still secure from arrest in certain precincts.

By the 8, 29, W. 3, c. 27 and 15, "for preventing, for the future, the many notorious and scandalous practices used in many pretended privileged places in and about the cities of London, Westminster, and Borough of Southwark, co. of Surrey, by obstructing the execution of legal process therein, and thereby defrauding and cheating great numbers of people of their honest and just debts," it was enacted that after the first day of May any creditor might issue legal process against any debtor, although resident within the Minories, Salisbury Court, Whitefriars, Fulwood's Rents, Mitre Court, Baldwin's Gardens, the Savoy, Clink, Deadman's Place, Montague Close, and the Mint. This security, however, was abolished 1696, but was permitted in some degree until the reign of Geo. II., 1727.

In the account of the County Palatine of Chester by the two Lysons, at page 299, we have the following description of the sanctuaries created by the Earls of Chester:—

"Amongst the extensive powers exercised by them the Earls, one—which the Lysons call the most singular—was that of granting the protection of sanctuary to criminals. This power, which they add, has been generally supposed to have belonged exclusively to the Church, was the source of much emolument to the Earls, who received fines from all such persons when they came to reside under their protection, a heriot at their death, and, in case of their dying without issue. claimed their goods and chattels. It appears [Harl. MS. 2009, f. 346] that these profits were farmed under the Earl in the reign of Ed. II,

Hoole Heath, near Chester, Overmarsh,‡ near Farndon, and Rudheath, near Middlewich, were the principal receptacles for such fugitive strangers as sought protection in the Earl's territories; but that the privilege was not confined to those wastes is apparent from Ranulph de Blundeville's charter to his barons, in which he allows strangers to settle on their estates as retainers, but reserves to himself the fines payable by criminals who should resort to them for protection. It seems, however, that in some instances the Earls delegated the power of protecting criminals. King Edward, in his charter to the Abbot of Vale Royal, the Earldom of Chester being then vested in the Crown, grants to him the privilege of sanctuary (anciently expressed in the words advocarias, and advowries). The power over minstrels and "meretrices," granted by the Earl of Chester to John Lacy, and by him delegated to Hugh Dutton and his heirs, was a branch of this system of protection.

"It may be observed that this protection of criminals was of a more unlimited nature than that afforded by the Church, which was confined to parish churches, cathedrals, and other consecrated buildings, and a certain space around them—in most instances not extending beyond the cemeteries, and in point of time was restricted to forty days, and that only as preparatory to banishment from the realm; whereas, under the protection of the Earls of Chester, felons and other criminals escaping from any part of the kingdom, so long as they demeaned themselves peaceably, were entitled to protection during life. The continued exercise of this privilege, by means of which Cheshire became the common receptacle of persons whose crimes had driven them from their own country, seems to have had, as might have been expected, a most pernicious effect upon the morals of its inhabitants. In the reign of King Henry IV, in consequence of grievous clamour and complaint, an Act was passed by which many of these offenders were made liable to loss of goods and to outlawry."

‡ King's or Over Marsh was a waste place surrounded by an old ditch, up to which the neighbouring towns had certain bounds and metes, but not beyond; that of old it was appointed and assigned for the dwelling place of foreigners of any country (meaning strangers to Overmarsh) seeking the protection of the Earl of Chester, or coming to his aid in time of war, where they might remain a year and a day; such was the finding of a jury, 722, see a note to Ormerod's Cheshire by Helsby, vol. 2, p. 753.

Under these Earls debtors had peculiar privileges. It was an ancient custom that if a debtor should come into the Court of Exchequer at Chester, and there swear that he would pay his debts as soon as he was able, the officers of that court granted a writ in the nature of a protection, by virtue of which he was at liberty to go where he pleased, unmolested by his creditors.

A similar custom with respect to debtors existed at Chester from very ancient times. Any freeman having been imprisoned for a debt, and being unable to pay it, on going before the Mayor of Chester, and swearing that he would pay the debt as soon as he could, reserving to himself only "mean sustentation," had a right to be discharged from his imprisonment. This is stated in a record of the claims of the city to various privileges in the reign of Henry 7; but about fifty years afterwards the practice appears to have been somewhat different, for by the records of the Corporation—[Orders and Acts of assembly of the Corporation in the Town Clerk's Office, Lib. A., f. 76, and Lib. B., f. 7]—it appears that any freeman imprisoned for debt, upon petition to the Mayor and Aldermen, and declaring that he was unable to pay the debt, was allowed to reside in what was called "The Free House," to walk at large within the liberties of the said house—(these are described as being tolerably extensive)—to attend divine service at St. John's Church without the north gate, but not to go into any private dwelling-house The privilege as to county debtors, to

which I allude, was abolished by an Act of 34 H. 8, but the privilege of the city debtors continued till our own times, although long disused.

The Act of 32 Hy. 8, before mentioned, was passed for abolishing the right of sanctuary in all places throughout the realm, except in churches, hospitals, and churchyards, and excluding from its benefits, even in consecrated places, all persons guilty of murder, rape, highway robbery, burglary, house burning, or sacrilege ; but by the same Act eight cities or towns were made sanctuaries for term of life for all persons guilty of minor offences. The next year the inhabitants of Manchester, who then carried on, as their petition sets forth, a great trade in the bleaching of linen yarn, making of linen and woollen cloths, and dressing of cotton, having experienced much inconvenience to their trade, which had been exposed to many depredations since the influx of dissolute persons who had resorted thither under the sanction of the Act then lately passed, and having, as they said, no mayor, sheriff, nor bailiff in their town, which was not walled, neither had it any gaol or prison for the confinement of offenders, petitioned Parliament for relief, praying that the sanctuary might be removed to some other town. Their petition was granted, and the sanctuary was, by the Act of 33 Hy. 8, before referred to, removed to Chester, which, as the Act sets forth, had no such trade of merchandize, and had a strong gaol for the punishment of malefactors, and a mayor,

bailiffs, and other head officers. The Act reserved a power to the King, if it should appear, by information or otherwise, that Chester was not a meet place for a sanctuary, he might, by his proclamation, discharge the said city thereof, and appoint some other town or place in its stead. Not long after the passing of this Act, Hugh Aldersey, being then Mayor, accompanied by Mr. Fulk Dutton, went up with a petition to the King, representing to his Majesty that Chester being a port town, and situated on the borders of Wales, was a very unfit place for a sanctuary for malefactors, and that it would be attended with many inconveniences to the merchants and inhabitants. The King acceded to their petition, and by proclamation removed the sanctuary from Chester to Stafford. All privilege of sanctuary was abolished finally by a statute of the 21 Jas. 1, after some vacillation in the legislation, during the reign of the two queens of the Tudor race.

Rudheath.—Dr. Ormerod, writing 55 years ago, remarks, concerning one of these sanctuary places—*Rudheath*—"that the numerous cottages which were scattered in the solitary lanes round this district contain inhabitants whose objects are not dissimilar to those of the lawless race to which Rudheath anciently afforded protection."

"The Inq., 7 Ed. 2, before referred to, tells us that a certain waste called *Overmarsh* (now King's Marsh), was in ancient times ordained for strangers, of what country soever, and assigned to such as came to the support of

the Earl of Chester or to his aid, resorting there to form dwellings, but *without building any fixed houses* by means of *nails or pins*, save only *booths and tents* to live in (*it looks as if these were Gypseys*)."

By an "Inq., 13 Ed. 3, during the time of war with Wales, all persons, being in the peace of the King of England and of the Earl of Chester, were wont to have refuge and receipt on *Hoole Heath*, with their goods, necessaries, and beasts, for a year and a half.

This description of sanctuaries, which was quite alien from those connected with Church Institutions, have been graphically described in the Alsatia of Sir W. Scott's novels. Alsatia was the fancy name for the sanctuary of the White Friars or Carmelites in Fleet street, which, after the dissolution of monasteries, "came to be peopled by roaring blades, swaggering desperadoes, thieves of every grade, dissolute women and their bullies, sots, gamesters, usurers, and ruffians of every sort: and, said a late Bencher of the Inner Temple to the Archæological Association at Norwich, if the truth must be told, occasionally resorted to by some of the wildest of their next neighbours, the roystering Templars. The wailing of children, the scolding of mothers, the miserable exhibition of ragged linen hung to dry from the windows of ruinous houses, all spoke the wants and distresses of the wretched inhabitants; whilst the sounds of complaint were overpowered by the riotous shouts, oaths, profane songs, and

boisterous laughter that issued from every other house, of deep potation."

All Londoners of the last generation remember a great street being cut from Victoria Station to Westminster through the heart of one of the most disreputable districts in all London. After Victoria street was made, and the Westminster Palace Hotel built, a portion known as Tothill Fields remained until it was finally cleared away to provide a site for the Aquarium. The environs, it is affirmed, were hardly second in evil repute to the old Mint in Southwark. Near Great Peter street is a small plot of ground well known as the Devil's acre, afterwards sketched by Gustave Dorè as one of his illustrations of London. In 1851 the whole district was a nest of thieves, into which the police hesitated to enter. Such a scene would the above-mentioned description of sanctuary have presented everywhere to our eyes if permitted to endure.

CHAPTER II.

LODGMENT OF FUGITIVES IN ENGLISH SANCTUARIES.

With respect to the actual spot to which claimants resorted, and the places where the sanctuary fugitives were lodged, the practice differed. In the early centuries of Christianity it was forbidden that churches should be used for any purposes save those of a strictly religious nature, as worship of God and the administration of the Sacraments. But we know that at subsequent periods this ordinance was far from being observed, especially during the 12th, 13th, and 14th centuries, and the extreme examples presented by these were often afterwards followed. Of this, one illustration is the petition by the citizens of Norwich, who prayed King H. 8 to be pleased to grant unto them the Black Friars; and from another document their object in asking for this grant (for which they had to pay £81, and afterwards £152, for the lead which covered the church chancel, steeple, and common hall) appears to have been to have a hall for the assemblage of the townsmen. So almost within living memory in Stafford the assizes were held, and Erskine advocated the interests of the sister of David Garrick within the walls of the beautiful church of St. Mary.

But to return. At first the sanctuary fugitives were at all events not lodged in the churches; but later there were

many instances of this being the practice, the first that strikes us being that of the sanctuary at Westminster, which was destroyed with great difficulty, owing to the massive strength and solidity of the masonry, about 80 years ago. Another instance was that of St. Gregory's, at Norwich. This was a sanctuary much in vogue, with long porches north and south, and lofty chambers over them, adapted for the reception and accommodation of fugitives. The question was proposed by the late Sir Fortunatus Dwarris to the Archœological Association,—"Were all large porches, with convenient rooms over them, originally devoted to such purposes, and not mere muniment rooms?" And this reminds me of the small room visible over the north porch of the remarkable church—once collegiate—of Tamworth.

I shall not attempt to lose myself in a wilderness of conjecture as to the original purpose for which wayside crosses were erected in different parts of this island in remote times, in Norman and Saxon, and even in Roman and British times. Whether they were there simply to indicate the interment of a Christian, or of one who had from violence or natural causes died suddenly without the offices of the Church, or to remind passers of Him who died for them on the Cross, or to serve as a place of prayer, or, as some old writers affirm, they were there to *guide and guard the way to the Church*, or to encourage and strengthen the timid, or to overawe bad, bold men. Enough that at least one class of these monuments belongs

to my subject, namely, *The Sanctuary Cross* (see Sir W. Scott's Macduff's Cross).

Another is that close to Land's End, in Cornwall. "It is situated about a mile from the church town," in the corner of a road turning down to some ancient ruins, called "The Sanctuary." It is regarded as Roman, is two feet high by two in breadth, and one foot in thickness, and it stands on a massive base three feet square, and about sixteen inches high. This is known as the Sanctuary Cross of St. Buryan. One important feature is that upon this cross is displayed a human figure with hands extended horizontally, and so forming itself a cross.

At a nunnery, once a Benedictine house, in the parish of Ainstable, formerly Armathwaite, was an incised stone inscribed with "Sanctuarium," partly in Saxon characters. (See woodcut in the first volume of Hutchinson's History of Cumberland, p. 192.)

Amongst the muniments of the cathedral of Worcester, one is a notification by the Bishop of the limits of the cemetery and sanctuary (A.D. 1460.) They were said to begin "from the great door of the cathedral charnel house by the great stone wall of our palace to the great gate of the said palace," and to continue through the whole circuit (*i.e.*, of the place).

So at Durham, the fugitives lay in a "graete" adjoining the Galilee, and were provided with meat and drink for 37 days.

At Beverley they had food in the refectory and lodging in the dormitory for 30 days. Here the privilege extended to a mile all round.

Hexham* was a Saxon foundation. The names connected with it are Wilfrid, who died A.D. 709, and Acca, 740. There were three storeys, each supported by columns, in addition to a crypt. The capitals of the columns, the arch of the sanctuary, and the walls were ornamented with sculptures and paintings. In Bishop Acca's time, and soon after Bede's, the building was more admired than any on this side of the Alps. There were a triforium and a clerestory. "Of all that structure and time, we have (the proceedings of the Durham and Northumberland Archœological Society tell us) but the crypt, the 'fridstool,' a few sculptured stones, and a vase-full of stycas! The fridstool was the central point of the privilege of the sanctuary, which extended a mile around. The Danes destroyed, A.D. 875, all that the refined taste of Wilfrid had accomplished, all that the affection and veneration of Acca had accomplished, and the structure lay a ruin, roofless and desolate, for 200 years." Re-built (1113-9), it was suppressed A.D. 1538, but had been long previously attached to Durham. Four crosses, each a mile from the church, included and defined the limits of

* Redmond, my years were scarcely thine,
When challenging the clans of Tyne,
To bring their best my brand to prove,
On Hexham's Altar hung my glove.—
Scott.—Rokeby.

the sanctuary of Hexham; a stone chair of the Norman period is still in the church. From this chair to take a fugitive was an offence irredeemable by any sum. There were gradations of penalties upon infraction of the sanctuary, according to the distance from the altar.

Hexham seems to have been much resorted to as a sanctuary by the Borderers up to the very time of the dissolution of religious houses, for we find Edward Lee, Archbishop of York, an intercessor on its behalf with the Secretary Cromwell to preserve it untouched, (*inter alia*) he urges

"Wise men *that know the border*, think that the lands of Hexham, although they were ten times as much, cannot contrevail the damage that is like to ensue if it be suppressed, and some weigh there is never a house between Scotland and the Lordship of Hexham, and men fear if the monastery go down, that in process (of time) all shall be waste nor he within the land. And what comfort that monastery is daylie to the contre here not only the contre men do know, but also many of the noblemen of this realm that hath done the King's Highness service in Scotland. I doubt not but that the land of that * * * is better by £200 a year if it lay in a quiet place, though our receipts on an average are under £200." And then he adds:— "As for Hexham, I think it is necessary to be considered, as I think they that know the borders will say."

The ceremonies of reception differed in different sanctuaries.

At Beverley, Beaulieu, and Westminster, the reception adapted itself even to persons of rank.

At Beverley, persons of distinction had a lodging in the dormitory, or a house within its precincts; at the end of their time their privileges protected them to the borders

of the county, and they could claim the same security a second time under the like circumstances; but if his life was a third time saved, he became a servant to the Church.

At Durham, the course adopted was as follows:—

1.—The fugitive was at the north door. There were two chambers where men slept to receive fugitives at any hour of the night.

2.—He is admitted at that late hour of the night, and the Galilee bell was tolled to give notice that someone had, as it was termed, taken church, *i.e.*, *sanctuary*.

3.—The fugitive was required to declare why he had taken sanctuary, and this before credible witnesses; also the nature of his offence.

4.—He then had *to toll a bell* in token of his demand for sanctuary.

5.—He then put on a gown of black cloth with a yellow X (cross), called St. Cuthbert, upon the left shoulder. A grate or bedstead was then provided for him near the opposite (the south) door of the Galilee, as it was called, and then for 37 days he was provided at the expense of the house with sufficiency of provision and bedding.*

* What was this after all but detention in a gaol for more than five weeks?

CHAPTER III.

FORMS AND PROCEEDINGS.

According to Andrew Horne, a lawyer, who wrote the "Mirror of Justice"* in the reigns of the first Edwards, the temporary sanctuary was privileged as presently mentioned. :—

FIRST.—SANCTUARY WHEN NOT ALLOWED.—If any fly to sanctuary, and there demand protection, we are to distinguish: for if he be a common thief, robber, murderer, or night walker, and be known for such, and discovered by the people, and of his pledges; or if anyone be convicted for debt or other offence, *upon his own confession*, and hath never *abjured* the realm, or hath been exiled, banished, outlawed, or waived, or if anyone have offended in sanctuary or joined upon this hope to be defended in sanctuary, they may take him out thence, without any prejudice to the franchise of sanctuary.

SECONDLY.—SANCTUARY WHEN ALLOWED.—But in the right of offenders who, by mischance, fall into an offence, *mortal out* of sanctuary, and for true repentance run to monasteries, and commonly confess themselves sorrowful and repent, King Henry 2, at Clarendon, granted unto them, that they should be defended by the Church for

* Printed in London, 1642. Translated from the French by W. H., 1646.

the space of 40 days, and ordained that the town should defend such flyers for the whole 40 days, and send them to the Coroner at the Coroner's view.

ELECTION.—It is in the election of the offender to yield to the law, or to acknowledge his offence to the Coroner and to the people, and to waive the law. And if he yield himself to be tried by law, he is to be sent to the gaol, and to wait for either acquittal or condemnation.

And if he confess a mortal offence, and desire to depart the realm without desiring the tuition of the Church, he is to go from the end of the sanctuary ungirt in pure sackcloth, and there swear that he will keep the straight path to such a port, or such a passage which he hath chosen, and will stay in no part two nights together, until that for his mortal offence, which he hath confessed in the hearing of the people, he hath avoided the realm, never to return during the King's life without leave, so help him God and the good Evangelists: and afterwards let him make the sign of the cross and carry the same, and the same is as much as if he were in the protection of the Church.

And if anyone remain in sanctuary above the 40 days, by so doing he is debarred of the grant of abjuration if the fault be in him, after which time it is not lawful for anyone to give him victuals. And although such be out of the peace and the protection of the King, yet none ought to dishearten them; all are as if they were in the protection of the Church, if they be not found out of

the highway, or wilfully break their oaths, or do other mischief in the highway.

See the form of abjuration in Rastall. Coll: of Statutes, section 3.—"Whilst they be in the church, their keepers shall (not) abide in the churchyard except necessity or peril of escape do require so."

Rastall. Statutes, temp. Mary. *Abjuration*, section 4.—"This hear, thou Coroner, that I, M. of H., am a robber of sheep or any other beast, or a murderer of one or more, and a felon of our Lord the King of England, and because I have done many such evils or robberies in the land, I do abjure the land of our Lord Edward King of England, and I shall haste me towards the port of such a place which thou hast given me; and that I shall not go out of the highway, and if I do, I will be taken as a robber and a felon of our Lord the King; and that at such a place I will diligently seek for passage, and that I will tarry there but one flood and ebb, if I can have passage; and unless I can have it in such a place, I will go every day into the sea up to my knees, assaying to pass over; and unless I can do this within 40 days, I will put myself again into the Church as a robber and a felon of our Lord the King, so God help me and His holy judgment."

He was compelled to keep the straight way to the shipping place, and forbidden to stay in one place two nights together.

At first, as I before said, in England, Alfred's law, A.D.

887, gave sanctuary for *three nights only*, which interval was held sufficient to enable the offender to compound for the offence. Any one who assaulted a sanctuary fugitive, in addition to the price of the injury, had to pay 120 shillings to the priest or minister.

But Beverley, Durham, Westminster, and St. Martin's le Grand had *special* privileges, obtained for or granted to them by their founders. Sometimes the privilege was permanent.

The general privilege was only temporary, but was afterwards extended, it is said, to 40 days after a felon or murderer had taken refuge, and he was to appear before the Coroner, clothed in sackcloth, and there confess his crime.

By a subsequent Act, 21 H. 8, c. 2, "immediately after his confession, and before his abjuration, he was to be branded by the Coroner with a hot iron upon the brawn of the thumb of his right hand with the sign of the letter A, to the intent that he might be the better known among the King's subjects to have abjured."

The oath to be taken by sanctuary men at the Church of St. John of Beverley, accorded by Athelstan, A.D. 937, two hundred years after the death of St. John, who was buried in the porch of Beverley Minster, is as follows:—

"Ye shall be true and faithful to the Archbishop of York, Lord of this, to the Provost of the same, to the Canons of this Church, and all others its Ministers.

Ye shall bear good heart to the Baillie and 12 Governors of this town, to all Burgesses, and Commoners of the same.

Ye shall bear no pointed weapon, dagger, knife, and no other weapon against the King's peace.

Ye shall be ready at all your power if there be any debate or strife, or not so, then in case of fire within the town to help to suppress it.

Also ye shall be ready at the Obit of King Athelstone, at the Dirige, and the Messe, at such time as it is done at the warning of the belman of the towne, and do your duty in ringing and for to offer the Messe on the morrow, so help you God and their Holy Evangelists."

He had then to kiss the book.

To pay the Bailiff's fee of 2s. 4d.

Also the Clerk for his name being inscribed in the Register Book, 4d.

An entry was also made therein of

(1) His description (gentleman, tradesman, or yeoman),

(2) his residence,

(3) place and mode of his crime.

The forms and proceedings at St. Cuthbert, at Durham, are detailed from the records referred to before as published by the Surtees Society, in 1837, p. 30 :—

"*Mem.*—That on the 13th day of the month of May, A.D. 1464, one Colson, of Wolsyngham, Durham, who had been detected in a theft, and therefore put and detained in gaol, at length contrived to escape and fled to the Cathedral Church of Durham, in order to avail himself of its immunities, and whilst he was there standing near the bier (feretrum) of St. Cuthbert, prayed that a Coroner might be assigned to him. Upon John Raket, Coroner of the Ward of Chester in Strata (*sic*) coming to him, the same Colson confessed the felony, making upon the spot the corporeal oath that he abjured the realm of England and would withdraw from it as soon as he could conveniently, and would never return thither, and which oath he took at the bier of St. Cuthbert in the presence of Master George Cornworth, Sacristan of the Cathedral Church of Durham; Ralph Bows, Knight and Sheriff of Durham; John Raket (the Coroner); Robert Thrylkett, Deputy Sheriff; Hugh Holand, and Nicholas Dixson, and of many others; by reason of which renunciation and oath all the dress ('ornamenta') of the said Colson belonged to the said Sacristan and

his office; wherefore the said Colston was enjoined to take off to his shirt all his garments, and deliver them to the aforesaid Sacristan, and he did so, placing them at the disposal of the aforesaid Sacristan, who, when he had taken them all into his possession, the Sacristan gave up and delivered to him again, gratuitously, all his dress that he had up to this occasion been clothed in; and after that Colston withdrew from the Church and was handed over to the nearest constable by the aforesaid sheriff, and so on from constables to constables, holding a white cross made of wood as a fugitive, and so he was to be conducted to the nearest seaport to take vessel as one never to return. This was done on the day, month, and year aforesaid."

Abjuration although a crime against the Crown was sometimes pardoned. See the patents of 15 John and Hardy's introduction. Thus that King sent his mandate to all his bad and faithful subjects, greeting:—Know ye, that for the love and upon the petition of our beloved and faithful Tho. de Galney we have pardoned, as much as in us lies, Roger de Parles, for having abjured our realm, which he did because he assisted his brother Henry in a duel at Tothill, against the assize of our kingdom. We therefore inform you that he is in our firm peace, and in testimony thereof we have caused these Letters Patent to be made for him. Witness ourselves at Chilham, on the 11th day of July, in the 15th year of our reign.

Upon the general subject of sanctuaries abjuration, their abolition, and the Statutory enactments, see Gibson's Codex, Tit. L.

CHAPTER IV.

WORKING OF THE PRIVILEGE OF SANCTUARY IN ENGLAND. ITS LIMITS AND ITS ABUSES.

The working of the simpler privilege of Church sanctuaries may be judged from the following instances of resorts to them in the county of Staffordshire alone, and in a single year. The Assize roll of the 56th year of H. 3, the last year but one of his reign, contains all the following instances, and in none of them is any Royal Charter referred to, but the fugitives appear to have relied upon the privilege of the Church alone. Thus in membrane 40, ib.: Simon Wade put himself in the church of Bradelye, and confessed himself a robber, and abjured the realm before the Coroner; his chattels are worth 2s. 9d., for which the Sheriff answers. The village of Bradelye did not take him, and is therefore in mercy. Henry, son of Matilda de Cliston, and Hugh le Fox, of Horecross, were together on the bridge beyond the grove of Lichfield, and a dispute arising between them, the said Hugh struck the said Henry with a staff on the head to the brain, of which he instantly died. Hugh then put himself in the Church of Lichfield, and abjured the realm before the Coroner. He had no chattels. William Godleg, the first finder, came not, and was

attached by Robert, son of Godfrey of Lichfield, and Gilbert, son of Geoffrey, of the same place, and is therefore in mercy. Afterwards it was testified that Matilda, the mother of the said Henry, appealed the said Hugh in the county court of the death of her son, and outlawed him at her suit.

In membrane 28 in dorso: Robert de Herberobur, clerk, put himself in the church of Tamworth, and acknowledged himself to be a robber, and abjured the realm before the Coroner. His chattels are 3s., for which the Sheriff answers. Also Walter de Hemberbur put himself in the Church of Tamworth, and acknowledged himself a robber, and abjured the realm before the Coroner. He had no chattels, and the 12 Jurors *made no mention of his abjuration*, therefore they are in mercy. [It would seem he had abjured and the Jurors did not think it relevant, and were therefore fined.]

In membrane 29: William, son of Alan, put himself in the church of Burton-on-Trent, and acknowledged himself a robber, and abjured the realm before the Coroner. He had no chattels, and the town of Burton did not arrest him, therefore it is in mercy.

In membrane 30: Robert Culkyng put himself in the church of Rugeley, and abjured the realm before the Coroner. His chattels are 5s. 1d., for which the Sheriff answers. The village of Rugeley did not take him, it is therefore in mercy.

In membrane 31, ib: Adam Tulk, of Aveton (Alton),

put himself in the church at Colwich, and afterwards came to the King's peace, and went from the said church, and he was instantly taken and carried to Bridgenorth, and there imprisoned at the time when Robert de Grendon was Sheriff, and he was delivered by the King's writ. The Sheriff is thereupon commanded to cause the said Robert to be bailed, and the Jurors testify that the said Robert died.

In membrane 34, ib: Hugh Scott put himself in the church of Tuttebyry (Tutbury) confessed himself a robber, and abjured the realm before the Coroner. His chattels are 3s. 11½d., for which the Sheriff answers.

In membrane 35, ib: John Brun put himself in the church of Cheshall, and confessed to having committed robberies and homicides, and he abjured the realm before the Coroner. He had no chattels, the village of Cheshall did not capture him, therefore it is in mercy. Afterwards it was testified that he had chattels, viz., 3s., for which the Sheriff answers.

Again, in membrane 37 in dorso: Nicholas, son of William de Colton, and Adam, son of Hereward, were together in the village of Dutton, and a dispute arose between them, when the aforesaid Nicholas struck the said Adam with a knife to the heart, and killed him instantly. He immediately fled, and is suspected, and he put himself in the church of Colton, and there remained from the first hour until night, and Ralph de Burgo would not permit the men of Colton to guard him in the said church, and they

say upon their oath that by the counsel and by the aiding and abetting of the said Ralph, the said Nicholas departed from the said church with the advice and assistance of William le Jovene, Lord of Colton, therefore it is to be spoken of as to the evasion and judgment of the said Ralph and the conduct of the said William; and it is testified that Leominus de Bokenton levied 100 shillings for the aforesaid evasion to the use of Hamon le Strange, then Sheriff. The Sheriff is therefore commanded to cause the said Hamon to come here. The chattels of the said Nicholas are 12d., for which the Sheriff answers. The villages of Colton, Bromley Abbots, and Bromley Bagots came not to the inquest, and are therefore in mercy.

In membrane 38: Alice de Alegrave put herself in the church of Crestane, (?) and acknowledged herself guilty of robbery, and abjured the realm before the Coroner. She had no chattels. The village of Eneston did not arrest her, and is therefore in mercy. Also Hawysia de Lek (Leek) put herself in the church of Weston, and confessed herself guilty of robbery, and abjured the realm before the Coroner. She had no chattels. The village of Weston did not arrest her, and is therefore in mercy. Also Richard, the Miller, put himself in the church of Staundon, and confessed himself a robber, and abjured the realm before the Coroner. He had no chattels. The village of Staundon did not arrest him, and is therefore in mercy. Also Stephen de Frucheton and Roger de Wemme put themselves in the church of Cros-

well (? Creswell), and acknowledged themselves robbers, and abjured the realm before the Coroner. They had no chattels. The village of Croswell did not arrest them, and is in mercy.

In membrane 39 : Agnes de Bakelye put herself in the church of St. Bertelin, of Stafford, and confessed herself a robber, before Bertram de Burgh, the Coroner. Her chattels are worth 12d. Afterwards it was testified that the said chattels belonged to Robert the Smith, of Stafford, through whose suit the said Agnes had put herself in the church. The town of Stafford took her not, and is therefore in mercy.

Richard de Alveton (Alton) put himself in the church of the Friars Minors, of Stafford, and confessed himself a robber, and abjured the realm before the Coroner. He had no effects. And the villages which came not at first to the inquest, are in mercy. [Sometimes several vills were in one Decennary; at this date it is possible the Foregate, wherein were the Friars Minors, was not regarded as part of Stafford]

A certain unknown christian woman put herself in the church of St. Chad, at Stafford, and confessed herself a robber, and abjured the realm before the Coroner. Her chattels are worth 12d., for which the Sheriff answers. The town of Stafford is in mercy, because she was not taken by it. (An applicant would be rejected if a heretic .

Alice la Blake, of Seseford (Seigford), put herself in the

church of Stafford, and abjured the realm before Bertram de Burgh, the Coroner. Her chattels are worth 6d., for which the Sheriff answers. And the Borough of Stafford did not arrest her, and is therefore in mercy.

In membrance 38, ibid: Adam de Bilyngton appealed in the county court Master Adam de Fileby,* Adam Martin, Chaplain of Stafford, William le Bere, and Peter le Somenur of robbery, battery, and imprisonment, and the appellant comes not now, neither does he prosecute his appeal. Therefore he is to be taken, and his pledges to prosecute are in mercy, viz.—William de la More, and Peter de Coleye. The Jury say upon their oaths that the aforesaid Adam Martin, William le Bere, and Peter le Somenur are dead, and that the said Adam came not, and the Jury say that there was an affray in the town of Stafford, because the same Adam de Fileby took the said Adam and Thomas and put them in *the stocks in the Sanctuary in Stafford*, and detained them in the stocks for five days, and afterwards permitted them to depart. The Sheriff is therefore commanded to summon him here, and the Jury say that he is not guilty of the said battery, nor robbery, and therefore he is acquitted thereof.

Later *i.e.* in 1300, it appears from the 6th Report of the Deputy Keeper of Records, 2nd App. p. 97, that Jo: (John de Cadamo), the Dean, and the Chapter of the Free Chapel of St. Mary, Stafford, wrote to the King relating

* He was a Prebendary of Hereford in 1279.

to the seizure of some persons who had taken sanctuary in their church.

The entry before the last from the same Assize Roll, however historically interesting, is not like the others an instance of the use of the privilege of sanctuary, but of the fact of the Sanctuary, which must be understood as in operation in the principal Royal Free Chapel of St. Mary.

The stocks alluded to would not be those belonging to the Borough, but to the Royal Chapel which had special privilege of Infangtheof, &c.

The town itself never was but for a short time a Sanctuary town, *i.e.* Tempore H. 8. The Dean and Chapter seemed to have placed the stocks in the sanctuary for convenience of surveillance and economy of space.

These cases of resorts to church sanctuaries amount thus to twenty in number, for the county of Staffordshire, then one of the less peopled shires in England; and this is for a single year, 1171—2; at the end nearly of the reign of King Henry 3. Would we arrive upon the above data at an average for the number of such cases throughout England during the whole reign, we would have to multiply 20 by the number of the counties, and the result by the number of years the King reigned. The total would surprise us, and the more so that to its correct appreciation we should have to remember that the population of England was at that time hardly more than a sixth or seventh of what it is at the present day, and that the calculation excludes from consideration the resorts to

other sanctuaries that depended not upon the general church privilege, but upon the charters of Kings!

The formal proceedings in the cases of church privileges are indicated by the contents of the above entries; but those of the charter privileges did not much differ in general features.

The two following cases occurred as late as the reign of H. 8., and at the famous sanctuary of St. John of Beverley :—

On the 15th March, 6 H. 8., Thomas Medley, lately of Lichfield, county Stafford, came to the place of St. John of Beverley, for debt and all causes touching the security of his body, and he was sworn, and he was admitted.

On the 4th March, 18 H. 8., Thomas Radley of Burton-upon-Trent, wax chandler, came to the protection of St. John of Beverley, for debt alone, and he was admitted and sworn.—See the Register of the Sanctuary of St. John of Beverley, apud Surtees Soc. Issues 1857, p. 1, pp. 113 and 189.

Stafford town plays also its own part in the history of sanctuaries, for it became one of the eight sanctuary towns designated as cities of Refuge by an Act of Parliament in the next reign. Henry the 8th fixed its application by proclamation but objected to his gaol or castle being used for the sanctuary.

See the following Patent of King H. VIII. :—

Henricus Dei gratia, etc. Vicecomiti Staffordiæ salutem. Licet nuper Virtute cujusdam Actus parliamenti per breve nostrum tibi inde directum

proclamari fecimus quod Villa nostra de Stafford infra Ballivam esset Villa Sanctuarii et quod Felones, Transgressores, et alii Malefactores illuc fugientes haberent Tuition: et privilegium ibidem, juxta Vim Formam et effectum Actûs et proclamationis prædict. ac aliorum Statutorum et Legum Regni nostri Angl. et cum ex Testimonio tuo et aliorum fide dignorum ligeorum accepimus, quod *Castrum et Gaol* nostrum pro prisonibus in comitatu tuo captis et capiendis situatum sit *infra Villam prædictam*, et quod quaedam *ambiguitas orta est utrum dictum castrum & gaola*, pro parcella sanctuarii villæ prædictæ acciperetur, etc., sciatis, etc., quod non est nec unquam fuit intentio mea quod *praedictum Castrum sive Gaiola* esset vel reputaretur aliqua parcella Sanctuarii prædicti, etc. Dat. 3° die Augusti, a° regni nostri 34°.

Thus the castle *and* gaol, and castle *or* gaol, are names of the same structure, *and within* the King's vill of Stafford, but the King declares that he never intended (*i.e.*, by his proclamation, which substituted Stafford for Chester as a place of sanctuary) that his castle or gaol should serve as part of the sanctuary.

The Parliamentary Rolls yield us the following cases :—

1278, 6 E. 1., Vol. 1, p. 14, b. *Memorandum.*—Ivo Texton espoused a serf of the Master of Kirkeby, in the sanctuary of the Church of St. Berian, and abode with his same wife half a year and more. But Will. de Monketon, Sheriff of Cornwall, ordered him to be arrested and led before him, because he had withdrawn himself from his previous Decennary, and caused him to be kept by the 4 nearer Decennaries for 2 months, so that he dared not issue forth fearing imprisonment. Afterwards he caused him to be detained by Colin, his clerk of the Hundred, in the said Church and Liberty, where never was a lay court held, notwithstanding the inhibition of the Proctor of the Master J. the Rector of the said Church, he caused him to be arrested and put to fine, and compelled him to enter that Decennary, and also caused Will. the Provost of the same land to be put to the oath, and fined him out of that liberty, to the foreign court he had not?

N.B.—That in times past all within the said Liberty were accustomed to answer before the Local Bailiff, and none other except concerning Pleas of the Crown on the coming of the Justiciaries. Temp. Ed. 1 or 2 (year uncertain), p. 476, ibid: William, the son of Richard de Whytegift, complains that whereas he had betaken himself to God and Holy Church for a trespass that he had committed, when his enemies and God's enemies came and took him out of the cemetery by force, where he had embraced the cross, and caused him to be imprisoned at York. Therefore according to the franchise of Holy Church, a brief was sued out and directed to the Sheriff of York, to

cause restitution to be made to Holy Church of the body of the aforesaid William. But the Sheriff would do nothing thereupon, and so the said William prays that he may again enjoy the said franchise. He was to have his writ as in other cases (is allowed), and let him obey the King's mandate or assign a reason to the chamber.

1347, 21 E. 3.—Certain creditors of Roger Bavant complain that he had passed his lands to the King, and then taken refuge in the government of the Friars Preachers of London, so they pray that his property in the hands of the King may be answerable, whereupon it was answered that they should have their suit of debt and account, &c. as at the common law.

1350, 4 E. 3.—John l'Angleyse killed the Mayor of Lymne, and took the franchise of Holy Church, and abjured the realm before the Coroner for the felony. After remaining abroad three years he returned, and on being arrested became appellant, the Parliament would not interfere, though it was affirmed that a person who had abjured could not be allowed by law to appeal. It was said that no grievance was shown.

1376, 30 E. 3.—A petition that remedy may be made of things of new use in the 'Mareschaly' of the King's "Hostel" (Marshalsea of the King's Bench). A man fearing his enemies, and having himself killed a man, flies to Holy Church, he is not indicted nor was he taken with main overte, he made no confession before the Coroner, and was not guarded; afterwards he goes out of the Church, whereupon the Seneschall of the "Hostell" holds inquest how he passed out of the Church, and the matter being found, he holds the village or parish liable as for an escape, and causes it to be levied by distress, without waiting for the response of the village or parish, to the great destruction of the common people there, and expressly against the law. Whereupon it was answered Le Roi S'avisera, par son grand conseil.

2 Parl. Roll, p. 369, and 3 Parl. Roll 1 Ri. 2, p. 27, b.—In the case of the sanctuaries at Westminster, St. Martin le Grand and other franchises. Feoffments to friend by fraud were to be void as against creditors, who might sue in spite of franchise, that the immunities of Holy Church be respected both in right of fugitives, and in right of the place. No guard was to be set by lay power within the said sanctuaries, and the fugitive was to be under no undue constraint within their bounds. Those chargeable with the guard are to guard well and securely, but are to set their watch outside the sanctuary, and in no manner within.

3 Parl. Roll, 320, 17 Ri. 2.—Complaint that the Abbot of St. John of Colchester, and the Abbot of Abingdon in Culneham, county Oxford, enforce the same privilege of sanctuary as the Church of Westminster *i.e.* "for all manner of men coming and flying within the precincts, for debt, detenue, trespass, and all other personal actions, so far that they suffer no Bailiff, Coroner, or other Minister of the King to perform their duties in execution of the law therein." The Abbots were ordered to appear and maintain such privileges if they could.

3 Parl. Roll, 503b. 4 Hy. 4.—Complaint by the Commons that divers persons of *divers estates*, resident both in the city of London and in its suburbs, as also from other parts of the kingdom, come in the absence of their Masters from day to day, flee with their Master's goods to the college of St. Martin le Grand in London, with the intent of living there from, and upon such goods without being subject to pressure or execution from the temporal law, and there they are received and harboured, and these very goods are sometimes seized by the servants of the college, and taken as forfeit to the said college. Debtors and Merchants as well of this city, as of other important places in the realm, flee thither also in order to live with similar intent. Many of the fugitives for their false gains forge and write instruments which they seal as those of third parties (merchants and residents in the city of London and other subjects of the realm) to their great distress and final destruction. The fugitives engage others outside to purchase goods to be brought for cash or receipt at the sanctuary, but when brought thither, the vendors can neither get payment nor have their goods back. From time to time also are received in the said college—murderers, traitors, robbers, money clippers and other felons, malefactors and rioters, making disturbance by day, and issuing forth the night to murder, or commit treason, larceny, robbery and felony, both within and beyond the franchises, after which they betake themselves again to the said college. And owing to the said privileges such offenders have hitherto escaped the operation of the law. And they pray redress accordingly, which they are to have on showing their privileges to the King's council.

3 Parl. Roll, p. 630, 11 Hy. 4.—John Boughay, Esq., tenant of the Duchy of Lancaster, would have been murdered by Hugh Edeswick and the Mynors had they not taken church, &c.

2 H. 5., Parl. Roll, vol. 4, p. 39.—Upon petitions, creditors were permitted to sue debtors going beyond seas after colorable assignment

of their effects, and to issue process against their effects in order to prevent their creditors from suffering.

3 H. 6., vol. 4, p. 291.—4 H. 6, p. 305.—Prayer of Commons.—That no person of good fame be prosecuted on the accusation of such as are in the "different sanctuaries of the realm, and other caverns and obscure places (cavernes and umbracles) there in a cowardly manner troubling the innocent people of the King and the entire realm."

Parl. Roll, 1454, 32 H. 6, vol. 5, p. 247.—A Rebel, Rob: Paynings, late of Southwark, Esq., adherent of the traitor John Cade, to whom he was "karver and sword bearer," pardoned on finding sureties, but continued his riotous conduct, and to do so more safely had taken sanctuary in the Church of Westminster, whence he had issued forth on different occasions continuing his misconduct as rioter. Extent upon the recognizances of his sureties to be estreated, but the sanctuary was respected apparently.

Parl. Roll, vol. 6, p. 182, 1477, 17 Ed. 4.—Privilege of sanctuary, if any, expressly saved to a King's subject although he was in other respects ordered to discontinue his suit against foreign merchants of the staple on pain of forfeiture of goods and denial of pardon.

Parl. Roll, vol. 5, p. 291, 1485, H. 7.—It appears from the petition of W. Brandon Knight, who had as Lancastrian, been deprived of his office of marshal of the K. B. by King R. 3., that he had taken tuition: and privilege of the sanctuary of Gloucester. He was restored to his office, for he went in peril of his life from King R. 3., and as no one would exercise his duties of marshal, and the petitioner having been solemnly summoned, and not appearing, his default had been recorded in the King's Bench, and King R. 3. granted the office to the same Duke of Norfolk now deceased, by whom the petitioner had received it. Brandon's petition for restoration was acceded to.

The opinion of the Justices and Doctors of both Laws is interesting, that the privileges of sanctuary extend only to a case of wrong, intailing forfeiture of life and limb.—3 Parl. Roll, pp. 37a, 51a, 2 R. 2.

3 Parl. Roll., p. 37, 50.—It results from the statements made by the prelates touching the Abbey of Westminster, "that Robert Haulay, Esq., and another person servant of the church had been set

upon and killed in the church itself by a great number of armed men, at the very hour when High Mass was being celebrated at the High Altar." Upon the complaint of the Lords Spiritual, certain Lords on their part objected that they should safeguard the Royalties of the Monarch, and the ancient laws of the land, and that the King should during his youth be so counselled and governed that nothing should be abstracted or accroché by the said clergy, and the said Lords vouched to bear record the justices and other men of law of the land who well know that in the Church of England, there was neither custom nor duty to yield immunity for debt, *trespass*, or *any other cause whatever*, except *only crime*; and also that certain Doctors in Theology, both canon and civil lawyers had been examined as to that, and sworn before the King himself to speak the plain truth of what appeared to them to be of reason, and they had said and determined after mature and sound deliberation "that neither in case of debt, account or single trespass, was sanctuary demandable unless it involved injury to life and limb."*

Rob. Haulay and Jo. Shakel prayed for restitution or compensation for two Flemish prisoners amounting to 1100 marcs, who had been taken from them by force by the officers of the late King E. Rob. Haulay stated besides that the late K. had granted by letters patent an annunity of 20 marcs out of the issues of the county of York, for having taken the Castle of Hamme, and for services in the march of Calais. The late King had considered the annuity inadequate recompense and promised additional reward. The parliament thought the claim merited consideration, and said that the mattter of the two Flemings should be attended to at convenient time according as the King and his council should order.

The petition of the clergy was delivered by the clerk of

* Here is preserved the rude Norman French of the Rolls.—Et oultre diont que Dieux, salve sa perfection, ne le Pape, salve sa saintitee, ne nul Roi ou Prince purroit granter tiel privilege et mes que (si) aucun Prince vorroit tiel Privilege granter, l'esglise q'est and doit estre founz et noricement de touz vertuz, ne doit cette privilege accepter, dont pecche ou ocasion de pecche purroit sourdre; car pecche est ocasion de pecche pur delaier un Homme voluntrifment de son dette and jouste recoverir del soen.

Here appears the church, so to say, protesting against the 2nd form of franchise as in extreme cases arrogated by Kings. See later Sir Thomas More's narrative of the arguments used upon the subject by Archbishop Bourchier and Henry Stafford, Duke of Buckingham.

Parliament to the Filacer, after having been submitted to the King in the council by the Commons.

The petition of the clergy was answered by another to the following effect:—

"May it please your Majesty, and in his noble council, for charitys sake, to consider the great damage which many of your loyal subjects have received wrongfully by means of the franchise, which the Abbey of Westminster, under color of general privileges contained in certain charters from your noble Progenitors has from time to time usurped with respect to fugitives to Westminster, some of them debtors, some flying thither with their master's property, and others in different ways relying on the said franchise, may it please you further to cause a due interpretation to be obtained as to in what the said privileges consist before God and in reason, in order to resume all ambiguities, to the ease and quiet of your said Majesty's subjects, that no more mischiefs and inconveniences (desaises) may henceforth arise from the said franchise, seeing that the said interpretation belongs of right to your Royal Majesty, and that the Holy Church should neither maintain nor give ground to suppose it supports, what is false or sinful."

The royal answer proceeded partly upon the charges so made and partly upon these others, it took for granted that some of the sanctuary men had been greatly in debt, or had wanted to detain property not their own, that they remained within the sanctuary as long as they liked, some of them all their lives, and this in order to bar people of their just rights, who had consequently never received any part of their claims; again other *sanctuary men* had systematically borrowed large sums of money, but although their resources were adequate to entire repayment they had withdrawn to the sanctuary, and lived there until their creditors remitted half or the greater part of their claims &c., &c. Consequently it was ordered that

a thorough and deliberate examination should be made, as well by masters in theology, and doctors in both laws, as by the King's justices and other sages of the laws of his kingdom, having before them the charters of his said ancestors in which are contained the general privileges before mentioned, in order to see if by the said privileges there was any privilege of sanctuary for debt and other personal actions. The charters are, charters one of King Edgar, and two of St. Edward. All this having been done, the opinions having been obtained, and the charters read, then comes the decision of the King, to whom of right and by the *law belongs the interpretation of the charters of his said ancestors*, after hearing the opinion of all the said sages, for justice sake, in ease and quiet of his said subjects and to avoid the damage which by such privileges might accrue hereafter to his said subjects, the Abbot being also there and having been heard as to what he had to say for such privileges, then the Royal decision is declared and interpreted as follows :—

"That no one for the future should, by virtue of any such general privileges or others contained in the same charters, have any Immunity or franchise within the Church Abbey or place of Westminster, in any cases before mentioned or similar ones, only provided always that to Holy Church should be preserved her franchise respecting felony. But nevertheless in respect of the especial affection felt by the King for the said place of Westminster more than for any other place in his kingdom, and particularly on account of his reverence for the noble body of St. Edward and the other great relics there, and in respect that other noble Progenitors of the King repose there, it is the will and intent of the King by the advise aforesaid, *that* those, who by fortune of sea or fire, robbers or other mischief with-

out fraud or collusion shall have been so impoverished as to be unable to pay their debts, and shall wish to enter the said sanctuary to avoid imprisonment of their bodies, may, and shall be in such cases suffered to abide safely and freely in the said sanctuary, and there have personal Immunity to the intent that they may in the mean time be sufficiently raised up to enable them to satisfy their creditors."

This Royal decision did not put an end to disputes (nor was it calculated to do so) as the sequel will show.

We read in the accounts of the Privy Council by Sir Harris Nicolas, 17th May, 5 H. 6., 1427, as follows:

"A day was given to the Abbot of Beaulieu to produce proof of his liberties and franchises, if any, entitling him to retain within the place aforesaid Will. Wawe, a *heretic* and *traitor*, *common highwayman*, and *public robber*." Min. of Council.—"Son of iniquity, robber of churches and nunneries." p. 312. It appears that afterwards he was arrested by Sir Jo: Radcliffe, and we know from the chronicles that he then met his death, says Sir Harris Nicolas, 3 vol. ib: p. 14. Stowe contains this pithy but conclusive information: "Wille Wawe was hanged."

1427, 4 Parl. Roll, 6 H. 6., p. 321.—John Colles of Huntingdon, an executor, is charged by co-executors with having appropriated to his own use the trust funds and with other grievous malpractices, as also with having conspired against the life of one of them in the expectation, as the third was aged, of himself surviving and remaining sole executor. It appeared that Colles was a man in straitened circumstances and had no means to live, neither did he dare to live at large, and so fled to *privileged places and other sanctuaries*, such as Westminster, Colham (Culneham ?), and Beaulieu, and had no one fixed residence in which the common law could be enforced against him. The Parliament directed in consequence Colles should be proclaimed, and on his non appearance, that the two other executors might act in their own name in all courts spiritual and temporal, and that any future executorial act by Colles should be null and void.

When Neville, Earl of Warwick, styled the King maker, had succumbed to the fortunes of the Yorkists upon the decisive field of Barnet, his widow fled to the sanctuary of

Beaulieu in Hampshire. Instantly the sanctuary protected her person, but all the patrimony of her family, the Beauchamps, was swept away, having been involved in the confiscation of her husband's lands; but it was restored to her two daughters, who married, the one George, Duke of Clarence, the other to her second husband King Richard 3. Their mother remained in sanctuary until the accession of King Henry 7 enabled her to regain her title and property.—See Dugdale's Baronage.

To Beaulieu also fled Queen Margaret with her son who was delivered so soon to be ruthlessly killed in the presence of the King.

A.D. 1454. The Duke of Exeter, nearly akin to the King by descent from the half brother of the Black Prince, took sanctuary in the Abbey of Westminster, from which for having associated himself with the troubles in the north, he was to the horror of the Abbot and Monks taken by force.—See 6 Privy Council Proc. 56, the editor, Sir Harris Nicolas, citing Stow 400.

In the seventh year of Henry 7., Thomas Croft lost by express Act of Parliament his office of ranger of the forest of Wichewood, county Oxford, although he had taken sanctuary in Beaulieu, but his offence is described as a detestable murder.

Vivid light is thrown upon the actual working of the usage of sanctuary in the north of England, by the brief statistical abstracts that follows up what took place upon the subject in the famous sanctuaries of St. Cuthbert of

Durham, and St. John of Beverley.—See the Issues of the Surtees Soc., first part, 1837. The former abstract supplying us with a general notion of the nature of the offence, and the number of the fugitives, and the latter more particularly specifying their station and trade.

Both abstracts apply to the same four reigns *i.e.*, those of Edward 4., Richard 3., and Henry 7., and Henry 8., covering in the case of Durham the years 1624—1524, and in that of Beverley the years 1478—1539.*

At Durham there had been in the case of *murder* or *homicide*, 195 crimes committed, but adding those implicated as acccssories or otherwise the number amounted to 283. Of the fugitives eight were husbandmen, four labourers, four yeomen, four gentlemen, three ecclesiastics, two merchants, one tailor, one plumber, one carpenter, one tanner, one baxter (baker), one glover, one sailor, one apprentice, one under-bailiff, one servant, one knight (an accessory), the occupations of the remainder of this serious class of offenders are not specified. Of other offenders sixteen were *debtors* (of these one is styled a

*The murderers had used principally daggers and whynyards, 62 had done so; 22 had employed swords, 5 used arrows, 10 used lances, and 8 used bills or axes, whereas different kinds of staff were in more frequent use (whether club staff, crabtree, kendal, pike, plane, pychyng, small spear), these staves numbered 38. One fugitive had hung a Scot without legal trial, another trodden one to death, two had used stones, and one a turf spade. A child had been killed in an attack upon the father. In some cases many years had intervened since the crime had been committed, such periods as of 7, 8, 9, 12, 18 and even 26 years.

shermane, another a horselibber, a third a merchant, and a fourth a flesher (butcher.)) As to *horse stealing* there were four who sought sanctuary, one of them a yeoman. For *cattle stealing* nine are mentioned. *Escape from Prison* affords four, one of them a shoemaker. *Housebreaking* yields four; whilst *Rape* yields but one. *Theft* yields seven, and amongst them one yeoman, one ecclesiastic, and one goldsmith. And the list finally includes one who claimed sanctuary because he had been *backward in his accounts*, another because he had harboured a thief, and a third because he had failed to prosecute.

The following are amongst the recorded cases of application for immunity to St. Cuthbert of Durham :—

A.D 1519. Thomas Ley, chaplain, employed to collect the rents of the Earl of Derby, gathers together the sum of £58 and losing it, as he says in his return, flees to the sanctuary through fear of a prison. He admits having brought away with him £13 6s. 8d. (the Earl's property).

28th August, 1519, comes to the Cathedral Church of Durham, one Robert Tenant, and urgently begs for immunity, in the form which follows:—"I aske gyrth for God's sake and Saint Cuthbert's, for safegard of my lyff and for safeguard of my body from imprisonment, concernyng such danger, as I am in, enenst (against), my lord of Northumberland, for declaration of accounts for the which myn answer was to Master Palmys, Master Stalle, survior (surveyors) to my said lord, Walter Woodland, auditor; William Worme, gentleman usher, and other more of my lord's servants' that were sent to Ripon to examine me in the presence of Master Newman, president of the Chapter of Ripon, and that it would please my lord's good lordship to let me have as maner of such books of myn delivered to me as belonged to my charge, so that I might have them and make them up there, which I would do in as convenient haste as I could possibly, and that done declare accounts within the said sanctuary, and if it were found I were in any maner of debt to my lord upon the

determination of my accompt, I should either content the same or ells fynd securitye, or els if I would finde no securtie, I would submit me to my lord, to the which Mr. Survier (Surveyor) demanded of me what time and space I desired to have for the perfecting of my books, and I answered that I could set no day, but as sone as I possibly might, for the which cause I ask gyrth for God's sake and St. Cuthbert's, in the presence of Maister Cuthbert Conyers, Sir Thomas Dowson, and John Clerk and many others." 26th August, 1519. Per me, Rob. Tenant.

At Beverley, in the period before mentioned, there had been 469 cases in all. The aforesaid abstracts enable us to compare them with those at Durham. Thus we find that there had been

Of Crimes Indefinite, 35. Persons Implicated, 35. No trade, 10; labourers, 3; tylers, 2; tailors, 2; masons, 2; dyers, 2; yeomen, 2; merchant, 1; husbandman, smith, butler, gent, litster, clerk, chapman, draper, skinner, shoemaker, haberdasher, 1 each.

Of Murderers and Homicides, 173. Persons Implicated, 186. No trade or occupation, 52; tailors, 19; husbandmen, 17; yeomen, 16; labourers, 14; weavers and websters, 11; shoemakers, 8; butchers, 6; gentlemen, 6; mercers, ; barbers, 3; brewers, 3; servants, 2; esquires, 2; surgeons, 2; millers, 2; mariners, 2; smith, 1; shearman, 1; spinster, 1; carpenter, 1; painter, 1; chapman, 1; malster, 1; cartwright, 1; gentlewoman, 1; chandler, 1; minister, 1; cooper, 1; literate, 1; saddler, 1; shepherd, 1; carrier, 1; tanner, 1; cook, 1; hatmaker, 1.

Of Felons, 51. Implicated, 54. No trade, 3; labourers, 3; tailors, 6; husbandmen, 4; butchers, 4; glovers, 3; goldsmiths, 3; cutlers, 3; tylers, 2; plumbers, 2; yeomen, 2; merchant, 1; smith, 1; clerk, 1; physician, 1; spinster, 1; grocer, 1; gentleman, 1; painter, 1; mariner, 1; shoemaker, 1; fishmonger, 1; fuller, 1; brickmakers, 2.

Guilty of Horse Stealing, 1. Treason, 1 (a butcher). Receipt of Stolen Goods, 1.—Haberdasher, 1. Coining Cases, 6.—Persons 7, no trades described, 1; yeoman, 2; flesher, 2; tailors, 1; weavers, 1.

Of Debtors, of no trade, 36; butchers, 31; labourers, 12; merchants

9; husbandmen, 9; gentlemen, 9; mercers, 8; tailors, 6; weavers, 5; dyers, 6; yeomen, 5; glovers, 4; drapers, 4; shearmen, 3; chapmen, 3; pewterers, 3; smiths, 2; grocers, 2; fishmongers, 9; bakers, 2; chandlers, 2; wheelwrights, 2; coopers, 2; pouchmakers, 2; vintners, 2; fishmongers, 2; bowyeors, 2; whereas tapper, alderman and grocer of London, carpenter, wax chandler, painter, goldsmith, clothier, waiter, malster, surgeon, pinner, skinner, fustain shearer, capper, mason, haberdasher, salter, carrier, tanner, woolman, singingman, woodmonger, cook, wooddriver, cooper, wooldriver, hatmaker, bedmaker, barber, 1 each.

The usage of sanctuaries was in some respects regulated by the Welsh laws (see the Welsh Laws by Owen, printed by command of his Majesty King William IV., under the direction of the Record Commissioners), in case of treason and theft, pp. 441—445, if a man did wrong to the worth of one penny while in sanctuary and *a relic upon him* he is to lose the whole of his property on account of that sanctuary, unless he obtains a new sanctuary, because the sanctuary whose privilege he broke is not to renew it, nor would a surety for another avail himself of sanctuary, for sureties are to abide by law (ib. p. 527). The chief officers *i.e.*, the doorward of the chief of the household, his server of food and cook are not to have sanctuary, 698. To enter a sanctuary was accounted disobedience in law (ib. p. 703). No one was to judge concerning a sanctuary, but the judge of the sanctuary, p. 604, who is not defined. But laws may exist and not be made use of. So sanctuaries too there were in Ireland, according to Leland Collect., vol. 1, p. 1., but not resorted to. And so in Wales it is said by Leland of the Cistertian Abbey of Morgan, in the county of Glamorgan, that the Cambrians

rarely or never used a sanctuary, 1 Leland Collect, p. 104, and so he tells us that was not frequented (incelebratum) ib. p 105.

Leland (2 Collect., p. 508), speaking of George Neville, brother of the Earl of Warwick, tells us that this Archbishop hunted and made merry with the King, but was playing a double part to King Henry. He had been Chancellor of England, and gotten his money covetously, but Edward caused all his goods to be seized for his own use, to the sum of twenty thousand pounds. He took the Bishop's mitre and made thereof a crown for himself. It was supposed that the Archbishop kept King Henry at at London when he wanted to be at Westminster. He had *letters from the King Edward to keep King Henry out of Sanctuary.* If he had been a true man, King Edward had not come into London before Barnet field.

We have in the annals of the great family of Stafford itself, many remarkable instances of the application of this privilege. A murder (the murderer, the brother of King Richard 2.) cost the race its heir. Sir John Holland, to avenge the death in a brawl of his esquire by the arrow of one of Stafford's archers, thought it incumbent upon him to slay the first Stafford of note whom he should meet with; Ralph, eldest son of Hugh, second Earl of Stafford, was the unfortunate whom he thus encountered; slaying him instantly upon the spot, he himself fled to the great sanctuary of Beverley. The Staffords had distinguished themselves in the French wars, and the then

Earl had married the daughter of Beauchamp, Earl of Warwick. Let us figure to ourselves the scandal. A King's brother was the criminal. In vain did the King's mother, from the sick bed on which she died five days' afterwards, solicit the life of one son at the hand of the other, the King vowed he would accord no pardon. Had he persisted Sir John Holland, then a sanctuary man at Beverley, would have been a landless, attainted, banished, ruined man. By the intercession (it is said of John of Gaunt) pardons were obtained from the Earl and also from the King. In expiation of the murder he had come to an agreement with the Earl of Stafford to find three priests to celebrate divine service every day to the world's end for the soul of Ralph Stafford, in such place as the King should appoint.

Sir Thomas More explains in his life and reign of Edward 5., the political, position and the motives which induced the widowed Queen of Edward 4., after her elder son was in the keeping of the Duke of Gloucester, to flee with her other son and daughters to the sanctuary of Westminster. It had been industriously, although secretly, circulated that Gloucester's title to the crown was better than that of the issue of King Edward, as King Edward and the Duke of Clarence were pretended to be both bastards, and the respective issues of both affected by precontract in the one case, and also by attainder in the other. The young King however, having in spite of his mother, been set in the keeping of his uncle upon pretence of his coronation, the next step taken had been to arrest the nearest relatives and friends of the Queen, who, then alarmed at the course events were taking got herself the Duke of York her second son and her five daughters with what goods were necessary for their use into the sanctuary at Westminster, and thereupon at midnight ordered her servants and what help could be had to remove them with all speed thither, when being received into the Abbot's lodgings, she and her children and all her

company were immediately registered for sanctuary persons and so looked upon themselves as in an unviolable fortress against their enemies' power and malice. All London was in an uproar, men thought what had been done was but a blind, and that the real design was to keep the King from his coronation, and to deprive him of his right, and this they were the more confirmed in, because numbers of the Duke of Gloucester's servants and friends were about the city and on the Thames, who examined all that passed and kept any persons from taking sanctuary.

The Protector, who was a very sagacious person, and shewed all readiness to satisfy the King's will and discharge his station well, soon discerned the causes of this uneasiness and considering how much the reasons of the King's grief reflected upon his reputation as well as hindered his designs in bringing the King to his coronation (for why should the Queen with her children continue in sanctuary, unless it were that she was jealous of some wrong and injury from him who having now the supreme power in his hands could only hurt her? And what a lame ceremony would the coronation be, if the Queen and the King's only brother bore not a part in it, but instead of that were deterred from it), he resolved to remove these rubs in the way of his government and design, and to that end calling a council he delivered himself to this purpose * * "In the management of the station you have placed me in, I do find that the Queen's continuance in the sanctuary with her children is such an invincible impediment in the execution of my place, that I cannot but propound the manifest inconveniences of it; and so much the rather, because I expected, that so good a settlement as your lordships had made in the last council would have removed her womanish fears, and she would have returned to court to the contentment of his Majesty and us all, but since she persists in her mischievous purposes, it is evident, that if fear drove her into the sanctuary, it is nothing but malice that keeps her there, for she who is no impolitic woman sees several unavoidable mischiefs, redounding to the public and to his Majesty by this action, which had she not some ill designs she would carefully avoid. And first what greater affront can be offered to you of his Majesty's council, than for the Queen and children to remain in sanctuary? Will not the people upon so unexpected a resolution make these inferences from it, that doubtless they are in very great danger, and that you who are in power are her implacable enemies, since neither her son's authority, nor her own and children's greatness are sufficient to secure them, but

they are forced to seek protection from the church, which is the asylum of the greatest criminals? And what an intolerable injury is this to you? * * As long as the King's brother remains in sanctuary, foreign princes will either censure us as cruel or tyrannical, or deride us as impotent or weak. But besides the coronation of the King being the main thing now in agitation, how can we proceed in it with any heart or earnestness, whilst the Queen and Duke of York are in sanctuary? What sort of men shall we be thought, who, at the same time we crown one brother so terrify the other, that he is forced to abide at the altar of the same church for his safety. Who can officiate with satisfaction at this ceremony if the Duke of York, whose place is next to the King, is absent from it? It is therefore my opinion, that some honorable and trusty person, who cannot be doubted to tender the King's wealth and reputation of the council, and is in credit with the Queen, be sent to her to demand the release of the Duke of York. He then proposed the Cardinal Thomas Bourchier for the purpose, and that if the Queen refused the Duke, they should take him by force. The Archbishop Bourchier with other spiritual lords present objected to taking away the Prince by force, on the ground of the violation of the sanctuary. He spoke of the Queen's objections as womanish fears! The Duke of Buckingham, after listening impatiently to the Archbishop, cries "Womanish fears! womanish frowardness! She knows she has no danger to fear for her son or herself!" I assure you for my part I am for fetching him away against her will, rather than by humoring her fears and peevishness, give her an opportunity of conveying him away. And yet I shall be bold to assert that I do not break any privilege of sanctuary, but rather rectify one of its abuses; for though indeed sanctuaries, as they were appointed and used under the Jewish law, were and still may be of very good use in several cases, as to be a refuge for such men as the chance of sea or their evil debtors have brought to poverty, to protect them from the cruelty of their creditors; and because the title to the crown of these realms had after come in question, in which contests each side counts the others traitors and the conquering side, though sometimes the worst rebels, treats the adverse party as such; it is necessary there should be a refuge in this case to the unfortunate; but as for thieves and murderers, whereof these places are full, and who seldom leave their trade when they have once begun, it is a horrid shame that any sanctuary should save them; and especially wilful murderers whom God himself commands to be taken *from the altar* and put to death. Yet if we look into our sanctuaries, as

now they are managed, how few are there whom necessity of their own defence, or their misfortune have driven to take shelter there? But on the other hand what number are there in them of thieves, murderers, and malicious and heinous traitors, and especially in the *two chief ones* in this city, the one at the elbow and the other in the very midst of it?* Insomuch, that if the good they do were balanced with the evil, we shall find it were better to be without them, unless such as are in power would effectually correct their abuses and amend them. Let sanctuaries remain in their full force, as far as religion and reason will permit. But I am sure, no lawful privilege granted to them can hinder us from fetching the Duke of York from thence where he neither is nor can be a sanctuary person. A sanctuary serveth to defend the body of man, who is in danger from not only some great, but unlawful hurt? And which danger is that Duke in? Is not the King his brother, and are not all we his special friends? As he has never done any man an injury, so no man designs him any wrong, and then what grounds can there be for him to be left in sanctuary? Besides men come not to a sanctuary as to baptism by godfather, but they must *ask themselves* if they will have it; for none but such as can allege their just fears and dangers ought to be admitted thither. And how can the Duke of York be justly kept there, who through his infancy cannot require it, and if he were sensible of the place he is in, would rather desire to be released from it so that I think, *with the clergy's leave*, 'tis no breach of privilege, if he and many others be taken by force out of it. And to convince them of it more fully, let me ask them a few questions. If a man go into sanctuary with another man's goods, may not the King, leaving his body at liberty, take them out of sanctuary and return them to the right owner? Can either Pope or King privilege a man from paying debts that is able to pay them? Several of the clergy present agreed, that by the law of God and the church, a sanctuary man may be delivered up to pay his debts, or restore stolen goods, his liberty being allowed, to get his living by his labour. Then the Duke said, "there's the same reason to do it, if a man's wife ran from him to sanctuary, or a child take sanctuary because he will not go to school, and many like cases. And therefore, I conclude that since he can be no sanctuary man who hath no discretion to desire it (for I never yet heard of sanctuary children) nor malice to deserve it, whose life and liberty

* At the elbow, Westminster; "in the very midst," St. Martin's le Grand.

can in no wise be in danger, he that takes such a one out of sanctuary to do him good, breaks no privilege of that holy place." And so all but several of the Bishops (who were against using force) were agreed that, if the Queen would not deliver up the Duke by persuasion, that he should be forced from her by the King's authority. But it being judged convenient that all fair means should be first tryed, the Cardinal with several lords to accompany him, was sent into the sanctuary to the Queen.

The Envoys on entering the sanctuary encountered the resolute refusal of the Queen. The Archbishop was then commissioned to go again to the Queen. They were to urge that the refusal occasioned a public scandal, that the King and the Council were both offended, that it looked as if one brother were in danger from the other, that it would be better to confirm their love by having them brought up together with a community of books and sports, and that acquiescence on the part of the Queen might be of service to the Queen's friends then in prison.*

The Queen admitted it would be better for the children to be together, but being so young the mother was the suitable person to have the charge, for that the Duke of York had been ill, and a relapse, as physicians know, is worse than the first sickness. Since, she said, I have ordered them so long, and am their mother, it must be allowed that as I am the most able so shall I be the most affectionately careful and tender of him. The King and Council will then dispense with his presence awhile till he is perfectly recovered, and before that I cannot part with him.

The Cardinal hearing this reply answered, not denying that the Queen was the fittest person to take care of all her children, but said that the country, although it would be glad to hear her sentiments and would even beg it of her, nevertheless it insisted that it should not be in that place, but in some place consistent with their and her honour; and, he added, if your Majesty resolve to tarry in that place they judge it more convenient that the Duke should be with the King at liberty rather than remain in sanctuary to the dishonour of the King, the Duke himself, and the whole Council, for it is not always so necessary that the child should be with the mother, and your Majesty seemed content to allow the King to keep court at Ludlow alone."

* This was a tender subject for them to touch upon, for those prisoners were either already put to death without form of trial or on the point of being so.

Upon this the Queen grew warm and smartly retorted "not so contented—the Prince was in good health, the Duke is now sick. And as for what you say that it is dishonourable to my child and to them that he remain in this place, I think the contrary, for certainly it is more for their honour that he abide, where no man can doubt he is safest, and that *is here* so long as *I abide* here and I do not intend to leave this place and endanger my life with my friends, who I would to God were here in safety with me, rather than I were in hazard with them. Why Madam (said Lord Howard) do you know any reason that they are in danger? No truly (said she roundly) nor why they should be in prison, neither as they now be, but I have great cause to fear, lest those who have not scrupled to put them in prison without cause, will as little value to destroy them without laws or right. Upon this the Cardinal winked upon the Lord to put an end to that discourse, and then added himself "that he did not doubt but that those Lords who being of her kindred remained in arrest, would, upon due examination of the matter discharge themselves of any accusation made against them, and as to her royal person there neither was nor could be any cause of danger!" "How shall I be certain of that," said the Queen. "Is it that I am innocent? It does not appear that they are guilty. Is it that I am better beloved of my enemies? No, but rather they are hated for my sake. Is it that I am so nearly related to the King? They are much further off, and therefore it seems to me that as I am in the same cause so I am in the like danger; I do not intend to depart out of this place, and as for my son, the Duke of York, I propose to keep him with me till I see how businesses will go; for the more greedy and earnest some men are to have him into their hands without substantial cause, the more fearful and scrupulous am I to deliver him." "And the more suspicious you are, Madame (replied the Cardinal), the more jealous others are of you, lest under a causeless pretence of danger, you should convey him out of the nation, and so if they permit him to remain with you now, it shall not be in their power to have him for the future. Wherefore it is the opinion of many of the council, that there is a necessity of taking the Duke of York immediately into their care and government, and since he can have no privilege by sanctuary, who has *neither will to require* it nor *malice* nor offence to need it, they judge it no breach of sanctuary, if you finally refuse to deliver him by fair means, to fetch him out of it; and I assure you, Madam, that the Protector who bears a tender love to his nephew, and the council who have an equal care and

respect for your children will *certainly* set him at liberty, unless you resign him to us, and this lest you should send him away." "Ay" (says the Queen) "hath the Protector, his uncle, such a love for him, that he fears nothing more, than that he should escape from his hands? I unfeignedly declare, that it never so much as entered into my thoughts to send him out of this place into any foreign parts, partly because his health will not bear any journeys, and partly because though I should not scruple to send him into any part of the world, where I knew him out of danger, yet I do not think any place more secure than this sanctuary, where there never was any tyrant so devilish who dare violate; and I trust that the almighty God will so awe the minds of his and my enemies as to restrain them from offering violence to this holy place. But you tell me, that the Lord Protector and his council are of opinion that my son cannot deserve a sanctuary, and therefore may not be allowed the privileges of it. He hath found out a goodly gloss, as if that place which can protect a thief, or wicked person is not of greater force to defend the innocent, because he is in no danger and therefore can have no need of it, which is an opinion as erroneous as hellish. But the child, you say, can't require the privilege of a sanctuary, and therefore since he has no will to choose it, he ought not to have it; who told the Protector so? Ask *him*, and you shall hear him require it. But suppose it were really so that he could not ask it, or if he could, would not, but would rather go out; I think that it is sufficient that I do require it and am *registered a sanctuary person*, to make any man guilty of breaking sanctuary to take my son out of by force and against my will. For is not the sanctuary a protection in that case as well even for my goods as myself? No man can lawfully take my horse from me, if I stole him not and owe nothing; and surely much less my child. Besides by law, as my learned council (*sic*) sheweth me, he is *my ward*, because he hath no lands by descent holden by Knight service, but only by soccage, and then I being the guardian of my son by law, no man can take him by force from me without *injustice* in any place and without sacrilege from hence. And upon this right I do insist, and require the privilege of sanctuary for him as my *pupil* and infant, to whom alone by law the care of him belongs, and if this triple cord may be broken, I mean the *right* which I have to keep him with me by the *law of man*, as his guardian; by the *law of nature*, as his mother; and by the *law of God*, as being in sanctuary with him. If all this be not sufficient to secure him from any human force, I think nothing under

heaven can. But I do not despair of safety *where I have always found so much.* Here in this sanctuary I was brought to bed of my son,* who is now King, and though his enemy reigned, and might have used the same or like pretences to have taken us both from sanctuary, *yet he did not,* and I hope no man will have the boldness to act contrary to all former precedents, but the place that protected *one son* will be a great security to the other. For to be plain with you, my Lord, I fear to put him into the Protector's hands, because he has *his brother* already, and since he pretends to be the next heir to the crown after them, notwithstanding his sisters, if they any ways miscarry, his way to the throne lies plain and easy to him. Now this is such just cause of fear, that even the laws of the land teach me it, which as learned men tell me, forbid every man, the guardianship of them, by whose death they become heirs to their inheritance; and if the law is so careful of such as have the least inheritance, how much more ought I to be fearful that my children come into his power, who by the their death will have the kingdom for his inheritance. I know the Protector and council have *power* enough, if they have *will* to take him and me from this place, but whosoever he be that shall dare to do it, I pray God send him shortly need of a sanctuary, but no possibility to come to it."

Memorable words! The Cardinal, whose complicity we cannot assume, was the Archbishop who crowned King Richard 3rd. He lived to crown as Queen of Henry, one of the Princesses whom he had seen with her mother in that sanctuary.

How soon afterwards that Duke of Buckingham realized the imprecation of the distressed Queen.† "He had need of sanctuary when he could not come to it;" and died we know on the banks of the Severn a fugitive, by the treachery of his retainers and without trial!

To return. The Cardinal finding he makes no way, changes his tone. "Madam," he says, "I will dispute the matter no longer with you. It is equal to me whether you deliver him or not. I am, with these Lords, *but the messenger to know* your resolution, and beg you will tell us plainly whether you will or will not deliver him to us? For though if you resign him to us I durst pawn my body and soul to you for his safety; yet, if you deny it, I will immediately depart and finish my trust, resolving never to engage in the matter again,

* Ed. 5 was born in the sanctuary at Westminster on the 2nd Nov., 1471.

† The Duke was put to death in the 28th year of his age.

since I see you so resolute in your own judgment, as if you thought both me, and all others lacked either wit or honesty; *wit*, in that we, not perceiving the Protector's ill designs, were made the tools of his wicked craft; *honesty*, in that, knowing his intentions, we have laboured to bring your son into the Protector's hands to destroy him; an execrable treason, which we ourselves abhor, so we dare boldly say, was far from the Protector's thoughts, and cannot be imputed to any in this case, but you must brand the whole *Council* with short-sighted advice and disloyalty to their Prince."

The Queen's hesitation at length gives way. "My Lord Cardinal and you my Lords, I am not so opinionated of myself or ill-advised concerning you, as to mistrust either your wisdom or fidelity, as I shall prove to you by reposing such trust in you, as if either of them be wanting in you, will redound to my inexpressible grief, the danger of the whole realm, and your eternal shame and disgrace, for lo! here is my son! the person whom you desire, and though I doubt not but that I could keep him safe in this sanctuary from all violence yet here I resign him into your hands. I am sensible I run great risks, for I have some so great enemies to my blood, that if they knew where any of it lay in their own veins, they would presently let it out; and much more *in others*, and the nearer to me the more zealously. Experience also convinces us all, that the desire of a kindgom knows no kindred. The brother in that case had been the destruction of the brother and the son of his father, and have we any cause to think the uncle would be more tender of his nephews? Each of the children is the other's defence while they are asunder; if one be safe they are both secure; but being both together they are in great danger; and therefore as a wise merchant will never adventure all his goods in one ship, so it is not well to put them both under the same hazards. But notwithstanding all this, here I do deliver him, and his brother in him, to your keeping, of whom I shall ask him again at all times before God and the world. I am confident of your fidelity and have no reason to distrust your wider power or ability to keep him, if you will make use of your resolution when it is required; and if you are unwilling to do that, then I pray you leave him still here with me; and that you may not meet with more than you did expect, let me beg of you for the trust which his father ever reposed in you and for the confidence I now put in you, that, as you think I fear so too much, so you would be cautious that in this weighty case you fear not too little, because your credulity here may make an irrecoverable mistake."

She turned to her child and said to him:—Farewell, my own, sweet son. The Almighty be thy Protector. Let me kiss thee once more before we part, for God knows when we shall kiss again; and then having kissed him she blessed him, and turned from him and wept, and so went her way leaving with the lords the child weeping also for her departure.*

Again from Lord Verulam's history of King H. 7, we know that after the coronation of this King a remnant of Yorkists from Bosworth field still attempted to make head. Thomas Lord Lovel, Humphrey Stafford, and Thomas Stafford (who had formerly taken sanctuary at Colchester) were departed out of sanctuary, whither no man could tell. A politic proclamation of pardon, issued by the King soon dispersed these rebels. But the Staffords likewise again took sanctuary at Colnham, a village *near Abingdon*, which place *upon view of their privilege in the King's Bench* being judged no sufficient sanctuary for traitors, Humphrey was executed at Tyburn; and

* "Upon dark and unknown reasons" says Verulam (Hist. H. 7, p. 584), "the Dowager Queen was later arraigned; for that she had afterwards delivered her two daughters out of sanctuary into the hands of Richard 3, was one of the reasons assigned by the council at Kew, for the Queen Dowager being cloistered in the nunnery at Bermondsey, and forfeiting all her lands." She died soon afterwards.

Although abbreviated, the conference in the sanctuary with the Queen is here faithfully presented in a version from Sir Thomas More, the classical historian who penned it; our great dramatist who made the trial of Queen Katharine so life-like an event in one of his best tragedies, could not have read Sir Thomas More's book, or would perforce have utilized the sanctuary scene for his tragedy of King Richard 3. That the narrative is faithful and substantially true I doubt not, for was not Cardinal Morton More's informant? Still less can it be doubted that the High Chancellor of England More represents truly by the mouths of Archbishop Bourchier, Henry Duke of Buckingham, and the Queen, the then current rules and conflicting ideas upon the subject of sanctuaries in England.

Thomas, as being led by his elder brother, was pardoned.

In 1491, Thomas Croft lost by express Act of Parliament his office of ranger of the forest of Wichewood, county Oxford, but his defence is characterized as a detestable murder. Rolls of Parl., vol. 6., p. 441.

Later, in 1495, Peter Perkin's celebrated proclamation charged the King H. 7, with having cruelly murdered some nobles, amongst others Humfrey Stafford, and with having spared the lives of others only for intolerable ransoms, and it affirmed that these were then in the sanctuary.

A.D. 1497. Of Peter Perkin, says Lord Verulam, folio edition (Kennet), pp. 612—3, "This impostor took refuge in Bewley (Beaulieu), in the new forest where he and divers companions registered themselves as sanctuary men, leaving his *Cornish men to the four winds.*" The King had given orders previously to pursue and apprehend him before he could reach the sea or the little island called the sanctuary. But they arrived too late. The King consulted whether he should offer Perkin his life if he left the sanctuary. The council were divided in opinion, some advised the King to take him out of sanctuary perforce, and to put him to death, as in a case of necessity, which in itself dispenseth with consecrated places and things; wherein they doubted not also they should find the Pope tractable to ratify his deed, either by declaration or (at least) by indulgence. Others were of opinion (since

all was now safe, and no further hurt could be done) that it was not worth the exposing of the King to new scandal and envy. A third sort fell upon the opinion that it was not possible for the King even either to satisfy the world well concerning the imposture, or to learn out the bottom of the conspiracy, except by promise of life and pardon and other fair means he should get Perkin into his hands. The king choose the third opinion, and *respected the sanctuary*, so Perkin obtained terms which by his surrender saved, for that time, his life. He was then in appearance at liberty, but under surveillance; the object of studied ridicule and contempt, he was paraded through the streets of London, followed at his heels by one bound hand and foot, who had been his abettor and counsellor, but who had not had the wit to take to sanctuary. And so whilst all who with Perkin had taken sanctuary were spared, the other poor wretch, wandering about as a poor hermit, had been taken and after so formed part of the show and for mockery was immured in the tower, whence he was only removed a few days afterwards to be executed. But Perkin dissatisfied with his treatment, again was in motion; he took to his heels and made for the sea coast. Intercepted he got to the house of Bethlehem, called the priory of Shyne (Shene) (which had the privilege of sanctuary), and put himself into the hands of the Prior. The Prior (reverenced as an holy man) went to the King and besought him only for Perkin's life, leaving all else to the King's discretion. This chimed in

with the humour of the King, who said "take him forth and set the knave in the stocks," which was accordingly done, and he was then conveyed to the tower.

Here the historian quaintly tells us, "that this winding ivy of a Plantagenet was ordained to kill the tree itself." And he proceeds to recount how fatal an influence he next exercised in the tower upon the unfortunate Earl of Warwick, the then only male representative of the elder Plantagenets of the line of York. It is unnecessary to say more than that detected again conspiring, and without the resource of a sanctuary, he paid at last the penalty of his imposture and was hung, A.D. 1499. But with respect to the three others (his counsellors) who had originally taken sanctuary with him at Bewly in Hants, the historian tells us "that they were not proceeded with. Either they were pardoned, or they continued within the privilege."

At a later period men took sanctuary against the process of the church itself, such was the case of the poet Shelton, poet laureate to King Henry 8, who fearing the consequences of the bad use which he had made of his wit, took sanctuary in Westminster, where he died. He was buried in St. Margaret's, the adjoining church.

A later case is this: Mr. Roberts in his Social History of the Southern Counties, cites the following from the History of Castle Combe Manor, by Hon. P. Scrope, (p. 409), "John Brewer killed Will Bull at Castle Combe with a sword (A.D. 1524), and then ran to the church. He spoke with the Coroner, abjured the realm, chose a port

beyond sea by Dover, and forfeited all his goods and chattels to the lord of the manor."

The late Sir Henry Ellis communicated to the Society of Antiquaries, amongst other extracts from the proceedings of the Privy Council, temp. Henry 8, the following:—

"At Richemonde, the xxviii. day of July, ano 1557, a letter to the Abbot of Westminster to give order that Edmonde Vaughane presently remaining in the sanctuary, who standeth to be charged with diveres fellonyes and will hethereto confesse but one of them, be delivered over unto the conestable of the towere, to be there furthere examined of the said felony, signefying unto the said Abbot that the said Vaughane after his examenation so taken, shall be restored againe to the sanctuarye yf it shall be his right so to be. Requiring him neverthelesse to keepe the matter secrete to himself, so that as neither the partyes maye knowe therof, ne any other that might bringe it to his knowledge. A letter to the conestable of the towere to receave the said Edwarde Vaughan at the Lord Abbot's handes for the purpose aforesaid."

CHAPTER V.

VIOLATIONS OF PRIVILEGES.

These extreme acts of violence, whether of a kind direct or indirect, are not chargeable upon any one single class, but every component part of Society. Sometimes the means used were the sword, fire, or starvation, and sometimes, as in the case of the widowed Queen of King Edward 4, persuasion, and in that of Peter Perkin, beguilement. The pages that immediately follow, show us not the populace, or the nobles or sheriffs alone as the perpetrators of the offence, but even Kings and chancellors, nay churchmen themselves.

The state of the country and of the different classes in it can often be traced more or less clearly in the lives of holy men, of which so many have been printed. The result leaves behind in the mind of the unprejudiced reader, little regret that the state of things in the middle ages did not continue to the present day. Listen to the sob of distress echoed to us from those distant times:—

"At midnight, in winter and icy cold, sons with their father (came) barefooted and weeping on account of their mother and prostrated themselves, imploring divine aid since human aid failed them against Goisfrid, of our estate of Daltun."*

* The text refers to the estates of the Church of Durham, but the reference is lost.

Again the following account is taken from the treatise called "Reginaldi Monachi Dunelmensis Libellus de admirandis Beati Cuthberti Virtutibus que novellis patratae sunt temporibus." This has been printed by the Surtees Society in 1835, from a MS. in the possession of the Dean and Chapter of Durham. The writer and the recent events of which he speaks belong to the early part of the 12th century, and to the reign of King Stephen.

In the 60th and 61st chapters we read how a youth in the service of the Bishop of Durham is slain; how the person accused of slaying him flees to the sanctuary of the cathedral; how friends of the deceased use every means to violate the sanctuary, and punish the murderer. Six of them remaining outside, others enter the church whilst the Monks are at supper. Of this number two hundred proceed to the shrine, and finding the culprit at prayer there inflict upon him eleven dangerous wounds. A multitude assemble, indignant at the outrage; the candle is extinguished, the altar cloth trodden under foot, and the shedding of blood is "deplored with horror." The Bishop next day reconsecrates the church, and pardons the wounded man, who speedily recovers.

One of the perpetrators of the above deed of "sacrilege" is caught in a village, three miles from Durham, and committed to prison and laden with irons, and reserved to be tortured with a horrible kind of death.

The 65th chapter pictures the state of society temp.

King Stephen; and Arden forest on the boundaries of Nottinghamshire; and a priest of a church there dedicated to St. Cuthbert. Date—*Feast* of St. Cuthbert, which lasts eight days, during this feast occur the following events:—A band of robbers exercise their vocation in all directions, murdering and burning, stealing and plundering the poor, and driving away their sheep and cattle, and come into the village with their spoil. The poor people of the neighbourhood, aware of their approach, had either hidden themselves in woods or caves, or had taken refuge in the church and churchyard with their goods and cattle. The thieves irritated at the nakedness of the vicinity, violate the sanctuary, and break open the doors of the church, and in spite of the priest's remonstrances seize all the live stock they can find, and afterwards lodge themselves and their prey upon a plot of ground surrounded by water in the neighbourhood. Here they kill and roast, and eat and drink and dance, and in the end fall asleep; they had set a watch however, round the margin of the island, in addition to archers and armourbearers, and other ministers of iniquity, and had the protection of at least eighty soldiers. The priest hears of their state and induces his own servants and a few rustics to join him in attacking them. He goes himself at their head, his attendants fourteen in number, follow him on foot, and they advance within a field of the thieves whom they find all asleep. There arises from the invaders the strangest mixture of noises, such as of men mending carts, of men sharpen-

ing blunted plough shares, of cutting stakes, of raising bundles of stakes on the shoulders. The animals on the island are the first to take alarm, the horses neigh with all their might, the sheep break from each other and bleat, the oxen low and attack the thieves with their horns, the swine grunt and run amongst them as they sleep, till at last the robbers roused from their drunken slumbers, begin to fight with one another as with enemies, some leap into the fire, some escape by swimming, in one hour not a robber remained; arms, horses, money, garments are left behind, the paths glitter with articles of value, and shields emblazoned with bright colors. Much is restored to their owners, and the rest gathered together in the churchyard.

It has been often said that until the reign of Henry 8, every church or churchyard was a sanctuary, except againt treason and sacrilege, offences not lightly to be forgiven by either the state or the church; and that from the reign of Henry 2 to the 8th Henry the law and usage continued pretty much the same; the instances in the previous chapter will enable the reader to see how far that was so. We have however to begin our account of the violation of sanctuary by the record of a violation committed by the King's servants, and of another committed by a dignitary of the church itself, the same King's brother. The former instance is of course the famous historical event of the murder of Thomas a Becket, Archbishop of Canterbury, committed in his cathedral church there, with all the facts of which history and

archæology have copiously dealt. Within two decades of that great event occurred the second event referred to, for in 1191, Geoffrey, Archbishop of York, bastard brother to the King, took sanctuary in St. Martin's Priory, Dover, or in Canterbury as some chronicles will have it (A.D. 1191). Geoffrey's election as Archbishop without the royal consent had displeased King Henry, and he was about to give him into custody, when his brother's protestations induced him to forgive him on condition he would never apply to the Pope for confirmation, and would swear to reside on the continent. Both these conditions, when the King was absent on the continent, he infringed. For he was "consecrated in virtue of a papal mandate by the Archbishop of Tours, and in contempt of his oath he hastened to England to obtain possession of his church;" required to take the oath of allegiance or to quit the kingdom immediately, Geoffrey eluded the officers and took refuge in the sanctuary, where he was permitted to remain four days; on the fifth day he was dragged from the altar in his archiepiscopal robes by order of William Longchamp, Bishop of Ely, and conveyed to the castle of Dover, but it is said the church was in his, Longchamp's diocese, and he was also legate of the Pope, and so he may have acted by virtue or under color of the one authority or the other.

Sometimes, says Dugdale, see Bar; p. 695, churches were set on fire to compel sanctuary men to come forth. Of this the most striking instance was in the case of William

Fitzosbert, called William Longbeard, who was by these means forced to leave the church of St. Mary-le-Bow in Cheapside. According to William of Newburgh, he had contrived to array, against the rich and noble of the city of London, fifty-two thousand citizens. Thus armed he defied the justiciary and the royal authority. Into the merits of the case it is not for us here to enter; suffice it that he was convicted and condemned to death. Longbeard took to flight, he sought refuge in that church and having, it is said, too good reason to apprehend that the sanctity of the edifice might not be sufficient to defend him, he retired to its lofty tower.

It happened that the Justiciary (Hubert de Burgh) was also at that time Archbishop of Canterbury, and St. Mary-le-Bow was his own peculiar. To the great astonishment of the surrounding crowd, the Archbishop, disregarding the immunities of this, his peculiar sanctuary, gave orders that Fitzosbert should be expelled by main force. And when it had been ascertained that the victim had fled to the tower of the church, the Archbishop directed that the structure should be set on fire. The fierce flames compelled Fitzosbert to abandon his stronghold. He was now at the mercy of the law, he was seized, stripped naked, tied to a horse's tail and dragged over the rough and flinty road to Tyburn, where his lacerated and almost lifeless carcass was hung, the historian says "finally upon the fatal elm," adding however that the infraction of the privileges of the sanctuary committed by the Archbishop

was not forgotten, but afterwards occasioned the loss of the great secular office which he held. This was ultimately made one of the grounds of a successful appeal to the Pope by the monks of Canterbury, the office of justiciar was adjudged to be incompatible with his ecclesiastic functions, and it was transferred to another.

I may observe upon this case of infraction of sanctuary, that the Pope does not appear to have expressly condemned that. There was enough to make Hubert obnoxious to his displeasure in that he had in point of fact been not merely uniting to his ecclesiastical functions those of justiciary, but had even acted as a military commander in the marches against the Welsh. Why did not the Pope condemn the firing of St. Mary-le-Bow? I venture to assign the reason in the gravity of the crisis, and in the fact that it was the Archbishop's own peculiar, and finally that William with the Beard may have been a heretic, and by the laws of the church, stricter than those of Moses, sanctuaries were denied to Jews, heretics and infidels, and indeed William is styled heretic in the vernacular chronicle of the city of London.

In 1232, Hubert de Burgh falling into disgrace with his master took sanctuary at Merton priory, but the King commanded the Mayor of London to force him from it, and Hubert fled to the high altar This order was afterwards countermanded, on account of the sacredness of the sanctuary and for other political reasons. Earl Hubert then came from the fastness himself, but soon took refuge in a

small chapel at Brentwood in Essex (at sanctuary Weald, then a chapel of ease), taking the cross in one hand and the host in the other. These however were forced from him, his feet were chained under his horse's belly, and in that ignominious manner he was conducted to the Tower. The whole body of his clergy was alarmed at this, and the Bishop of London declared to the King that he would excommunicate all who were concerned in this breach of Church's privilege. The King ordered de Burgh to be sent back to the chapel, but commanded the sheriffs of Herts and Essex to guard the chapel so strictly that the prisoner might neither escape, nor receive victuals from any person, they began by making a ditch about the Bishop's manor house and adjoining chapel. Hubert then yielded himself to the sheriffs who carried him to the tower fettered and chained. His affairs being partly made up, he was sent to the castle of Devizes, but from thence escaped to a neighbouring church, where his pursuers finding him before the altar with the cross in his hand, dragged him thence by violence and brought him back to the castle. The church was in the diocese of Sarum, and the Bishop upon this outrage committed *against the privileges of the church*, repaired to the castle, but his solicitations proving ineffectual, he excommunicated the whole garrison, and preferred a complaint to the King. The Bishop of London and some other prelates joined him, and they so pressed the King that he ordered the prisoner to be restored to his sanctuary. This how-

ever was of small benefit to Hubert, as the King commanded the sheriff of the county to prevent any person from bringing him victuals. On the morrow he was rescued by a troop of armed men, escaped into Wales, and at last died peaceably.

The Dean and Chapter of St. Mary of Stafford petitioned the King against certain individuals who had seized some who had taken sanctuary in their church A.D. 1300 (6th Rep. Deputy Keeper, 2 app. p. 97), but what was done with them is not mentioned.

In the first year of King Richard 2, a formal complaint was made to Parliament that men of Holy Church, holders of livings, and others were apprehended whilst they were present at divine service, and put out of the Cathedral Churches and other churches and their cemeteries, and also in other places when bearing the Holy Sacrament to the sick, under pretence of their outlawry raised against them by the malice of their accusers, and they were forcibly seized and arrested and led to prison contrary to the franchise of Holy Church.—Rolls of Parl., vol 3, p. 27.

An infraction of sanctuary had taken place in the case of an esquire named Haulay, as before mentioned, supra p. 47, whereupon the Archbishop of Canterbury petitioned the King on behalf of the liberties and franchises of Westminster, alluding to the violence committed in the case of the above Haulay and his companions * * * which touched not merely the Abbot of the said Minster and the said Archbishop, who is his Metropolitan, and his brother

the Bishop of London, in whose diocese the Abbey is founded, but the Church of England and the Pope, to whom the house was especially subject, as also the whole body of the clergy, and so they pray relief, &c.

In their answer the Lords retorted that the clergy should not be allowed to sanction or commit any wrong in contradiction to the laws of the land and of good faith, and, if committed, these should be repealed and all set as it was of old and ought in reason to be. And the Lords supported their view by vouching to record the justices and men of law in England, "who know well that the Church of England should not, nor ought to have any immunity for debt, trespass, nor any other cause whatever, but only for crime;" and also they say that certain doctors in theology of the canon and the civil law, have been examined and sworn before the King himself to speak the plain truth, and what they thought of the reason of the pretended franchise, and that these after good deliberation had pronounced, and determined that unless risk of life or limb be involved, no one ought to have immunity in Holy Church for debt, accompt, or trespass. Moreover, they say that no one, not God himself saving His all perfection, nor the Pope saving his Holiness, nor any king nor prince could in fact grant any such privilege.* And that if any prince wanted to grant such a privilege, the church which is and should be the fountain and nurse of all virtues, ought not to

* See the Norman French Text, supra p. 47.

accept the privilege from which any sin, or occasion to sin was likely to arise; for sin it is and occasion for sin, expressly to delay a creditor in his claim for a debt, and justice it is to recover one's own. And so they pray on their part that for the good of all and for the salvation of the royal rights, the said franchise should be looked into and examined, and due aid given to and remedies applied for the ease and profit of the whole realm. And so came before parliament doctors in theology, canon and civil, and other clerks on the King's behalf, and there in the presence of the King, the Prelates and Lords and all the Commons assisting, adduced their arguments and proofs in opposition to the Prelate upon the aforesaid matter, basing them upon divers plausible (colorables) and strong arguments, to which the Prelates did not then answer, but prayed for and had time granted to do so.—Rolls of Parl., vol. 3, p. 37.

These proceedings it will be seen from the sequel translated from the Law French of the Parl. Rolls* led to an apparent compromise, very much disparaging the effect of the very general words in the charter of Saint Edward, but still leaving to debtors their right of sanctuary, where impoverished by perils of the seas, fire, or robbery, and where the insolvency they alleged had not been due to their own fraud or collusion.

It appears that the immunities claimed A.D. 1393—4 by

* See supra p. 47.

the Abbey of St. John of Colchester, and Abbey of Abingdon excited similar complaints. ib. p. 321, b.

In the 51st year of Edward 3, the Commons petitioned that whereas divers persons, and some of them heirs to tenements, raise credits not only in money but merchandize, and then make over their tenements and castles to friends, to have by collusion their usufruct at discretion, and then flee to Westminster, St. Martin, or such other privileged place, where they long continue to live, withholding what belonged to others, until the creditors are too glad to take a small portion of the debt to release the rest. And so then the debtors return home, and get their tenements, property and castles back to deal with as their own by acquiescence of their friends, &c. Whereupon the King's will is, that if the feoffments are found to be executed by collusion, the creditors are to have execution just as if they had not been made.—Rolls of Parl., vol. 2, p. 368.

In the year 1454, the Duke of Exeter, nearly akin to the King by descent from the Black Prince, took sanctuary in the Abbey of Westminster, dreading punishment for having associated himself with those who were troubling the King's peace in the north. To the horror of the Abbot the Duke was taken thence by force.

Other instances too we find where sanctuary men were seized in the church itself by its disobedient sons, too powerful for the law. Such was Edward 4, who when after the battle of Tewksbury, the Duke of Somerset and twenty other persons of distinction belonging to the

defeated party had taken refuge in a church, caused it to be surrounded, the Lancastrians dragged out and immediately beheaded. Even Richard 3 was not so bold as this, he merely threatened or inveigled, or set men to watch the Thames and waylay all boats plying towards Westminster, that they might not convey to this privileged place the enemies whose lives stood in the way of the political interest of his party, or his own ambitious designs. And so Henry whose nightmare it was to be in constant dread of the starting up of some one with a title better to the throne than his own, never openly infringed a sanctuary, but obtained a bull from Pope Innocent not invalidating but qualifying the privileges of sanctuary in case of high treason, and providing that here if the offender took sanctuary the King might appoint keepers *to look to him.* A provision terribly worked by this King to the destruction of the unhappy children of Edward 4, brother to the Duke of Clarence.

1 H. 7, c. 6.—An act was passed that certain persons within *sanctuary* or "hydell," for having been partizans of Henry or "enemeyes of his enemeyes" should be discharged from all actions or suits respecting acts committed in favour of Henry, &c.

The limits of the sanctuaries that fell within the purview of the Reforming Act of 32 Henry 8, c. 12, s. 5, were to be set forth by Commissioners appointed under the great seal of England. By the second section of the same statute, in apparent imitation of the six cities of the

Levites, eight places viz., Westminster, Manchester, Northhampton, Norwich, York, Derby, and Launceston were declared to be sanctuaries for specified purposes.

Manchester was afterwards by the Act of 33 Henry 8, c. 15, as before said, discharged from being so privileged, and West Chester, *i.e.* Chester, substituted in its place.*

It does not require much ingenuity to detect the hand or influence of Henry 8 himself in this legislation which followed, with unequal steps, the Mosaic law as to the six places of refuge in Palestine.

The privileged places instituted by Moses gave not merely their help to the children of Israel, but to the stranger and sojourner among them, in like manner the

* It is curious to mark in the preamble of the same Act the reason of the discharge of Manchester; "its inhabitants manufactured clothes, as well of linen as of wollen, and employed many hands, and Manchester was therefore greatly resorted to by strangers, as well of Irlond as of other places within this realm, with the necessary wares for making clothes to be sold there; the lynen yarne had to lie out in the night for half-a-year to be whited, and the wollen clothes there made must hang upon the 'taynter' before they could be made up; that many strangers bring their cottons also to be sold; whereas the sanctuary men live in idleness to ill example, and entice others to do the like, and to mispend their master's goods; that thefts and felonies have thereby increased; that the said Irishmen and others now withdraw themselves, to the utter decay of the town; that Manchester is not walled, so that the sanctuary men continually escape out at night, and that there is no proper officer nor jail to regulate matters; such were the main reasons assigned for removing the sanctuary to Chester. But, as we have seen, although Chester had a strong castle the other reasons applied to her too, they petitioned on this account and the sanctuary was removed to the town of Stafford, where there was a castle or jail, but the King in the sequel would not allow it to be used as a sanctuary.

servant who had fled from his master was not handed back to his master, but was to abide in the place he had chosen and not be illtreated (Deut, ch. 23, v. 16). The servant therefore had no need to flee to any of the cities of refuge, he was safe from the pursuit of his master in any place he had chosen. The servant is to be understood as not an Israelite but a heathen, not his conversion but his protection was in the generous contemplation of the law giver. How different the motive of the English King who did not wish the sanctuary men to flock abroad to teach his foes the practice of British archery, and therefore gave them places of refuge in England to flee to! The privilege of asylum amongst the Israelites appears in all its aspects as a support to the pursuit of justice, and as the means of erecting a more perfect system of law. When the avenger was under no check and when revenge was a right, the privilege lessened as far as possible its evil operation, abandoning only to the avenger of blood the man guilty of premeditated homicide. But, at the same time, there might be a something of carelessness and improvidence in an act occasioning death, although not premeditated, which would justifiy some punishment. Nor must it be forgotten that the institution of the free cities operated to check the flight of Israelites to foreign regions, where idolatry prevailed and might attract such fugitives. In short the asylum law of the Jews served at once to the just maintenance of the state in its ordinances, and at the same time to the maintenance

of the belief in one God. Nor was it only in England, that the system of free cities was borrowed from the Jews, for we find Flemish and German cities endowed with privileges not unlike those in force under the Mosaic law.

In a recent review by the German Jurisconsult before mentioned, the course of the secular 'Asyla' is traced with a masterly hand, showing how they were accompanied by principles so similar to the English, and how they led to so similar abuses, that it is difficult not to be persuaded that such consequences necessarily follow such legislation. (Valenciennes in French Flanders possessed similar immunities for debtors and criminals).

In the Presidency of Madras, at Masulipatam, British residents have pointed out to them certain places which are known there as the Debtors' Bounds. A designation which, without being quite certain, I will venture to suppose to resemble similar places in this country and Scotland, where the fugitive debtor was, under certain conditions, safe for awhile from the oppression of legal process. Now if such places existed in India, a country so tenacious of primitive institutions, if they were thought worthy of establishment *there* they would follow all the flow of Asiatic races from India to the West.

CHAPTER VI.

FUGITIVE SLAVES. AMBASSADORS. CRIMINAL FUGITIVES TO FOREIGN STATES.

It remains to us to take a rapid glance at some usages analogous to the privileges of sanctuary.

Amongst the nations of antiquity, the Jews alone distinguished themselves by refusing, through their ordinance as to Jubilees, to countenance the existence amongst them of a necessarily life long slavery. No wonder that their legislation presents in other respects a striking contrast to the hard, severe and cruel system of Rome in its treatment of fugitive slaves! The same sentiment of humanity or respect for the divine image that had influenced the Jews, became it would seem at first imperceptibly and as an inheritance, and afterwards by express laws the characteristic of the church's treatment of slaves in its earlier struggle with oppression and tyranny.

A few years ago the treatment of fugitive slaves on board of British men-of-war at friendly ports came before the House of Commons. A slave had fled from his master at Jeddah, and had got on board a British man-a-war, the commander of which had delivered him over through the British Consul and the Turkish authorities to his master. It appears that a royal commission on fugitive

slaves had recommended that the mere admission of a slave on board a ship should not necessitate the retention of a fugitive, but that the captain should take all the circumstances into consideration, especially in the case of friendly states where (as in Turkey) domestic slavery was recognized by law, and decide according to the best of his judgment if the fugitive should or should not be surrendered; this recommendation was embodied in a circular which the government ordered to be sent to the different consuls. The recommendation and the circular are the basis of the present practice. A discretion is left to the captain. It had been acted upon in the Jeddah case. "The slave, said Mr. Bourke on the part of the government, had been taken to the Consul and the Consul had taken securities against his being ill-treated. The Consul's report had not been yet received, on its receipt, added Mr. Bourke, the government would take the whole matter into consideration, and see whether or not the Consul had done right." This it is believed is the way in which the case would be dealt with should it again occur. And indeed such dealing would seem to be based upon the councils and canons of the church in the early centuries. Upon what principle did these proceed? The history is a long one, and has been well told in our times by Francesco Forti, in his Instituzioni Civili, Libro. 2, cap. 3, according to whom the master claiming a fugitive slave had to apply to the priest of the church for his delivery up to him. The priest never restored him before receiving from

the claimant, a pledge as the law required, that the slave should not be subject to punishment.*

Theodric, King of the Ostrogoths, exacted a similar engagement from the master, but allowed the slave to abide in the church only a single day. Liutprandt's law compelled the slave owner, who had himself or by others caused his fugitive slave to be taken from the asylum to compensate the church by a money payment. Did the slave by yielding to force lend himself to such withdrawal, but without order from his master, the latter had to give him back to the church and there was no talk of compensation.

In the age of Charlemagne† the church which recognized the right to own slaves, whether their slavery was complete or qualified was bound to protect at once the law and the interests of humanity. To protect the law the church

* Slavery amongst the Visigoths, according to Mr. Southey (Chronicle of the Cid. p. 187), must indeed have been a bitter draught, for amongst them the usage of sanctuaries was in a very rude state, and denied to slaves. If a woman married her slave, or one who having been her slave was emancipated both were to be burnt. The very sanctuary was forbidden to them; they used to fly to the churches that the clergy might hear their complaints, and compel their merciless owners to sell them, but even this refuge was taken away, and it was enacted that they should be given up to punishment.

† Baron de Maseres Archæologia, vol. 2, p. 313, thought we might in part refer the origin of slavery in England to the institution of sanctuaries. He supported his view by the charter of an early Saxon King to Croyland, which entitled the Abbots to take as slaves all who fled to sanctuary there. A strange inference when we know that the Roman system of slavery here was long prior.

would not sanction its asyla prejudicing the rights of owners, but justice demanded that its fugitives should receive from these asyla the same benefits as slaves obtained, who resorted in Pagan times to the statue of the gods. Civil and canonical systems of law agreed in the regulating in the same manner the consequences of the resort to the asyla. No one was permitted of his own authority to remove by force from churches those who had fled to them, but they had to apply to the Bishops, who took cognizance of the complaints of the slaves, and the wrongful acts of their masters, and interposed to obtain pardon for the former, guaranteed by an oath of the master to observe it or pay two slaves to the church. (Council of Orange, A.D. 511, canon 3) the oath once taken, they could not refuse to restore the fugitive slave, but had first to explain to him his moral duty as slave, and the merit of faithful servitude in the eyes of God. An infidel master, who found christians to swear for him, was entitled to have his slave back on the same terms. It seems that the fugitive slave who deserved death, could not have stipulated for him more than his life, his master being free to chastise and beat him, or make him work more laboriously. It is not improbable where the slave's complaint was found well grounded, that the owner was either forced to sell him to the church, or to sell him to another, it being, adds Forti, impossible to suppose that pious prelates would not do as much for the slaves as the prescripts of Antoninus Pius had required. The out-

lay of ecclesiastical money to redeem slaves from bad owners was ever a meritorious work (and so the church briefs in England of the 16th and 17th centuries present numerous instances of funds being required for the redemption of christian slaves in the east.) The Canons provide for the due indemnity to masters for their slaves inadvertently admitted to sacred orders, and this without disparagement to their right of revendication by the owner. Gregory the Great provided for slaves who had come to monasteries a year of probation, allowed the owners' revendication and regarded as slaves those who abandoned the monasteries. The treatise cited gives a view of the system as it further developed itself.

Another sanctuary presents itself to us in the Ambassador's house or hotel. The privilege of the Ambassador's house is that of a vice-king, and this has been reasonably deduced from or confirmed by ancient usages, and even Anglo-Saxon institutions. With the latter the King's peace extended to his royal residence and 3,000 paces around; it extended to the King himself beyond the precincts of his palace. Privilege from all injury attached not only to his person but his residence and property, and was embraced under the common name of peace of the King. Whoever fought or stole in the King's "Burh" or in its vicinity, compromised his life unless the King's grace freed him.

It is intelligible how this royal privilege extended itself to all who frequented his palace, and how the peace of

the King protected the city or district in which he lived. The Ambassador is the representative of his King, and the immunity of the Ambassador's house was founded upon that of the King (a fallacious inference if the house is what is privileged), but it is for another reason, viz.—because it has become so not only by an international understanding, but by the consent of the particular King, or state to whom or to which he is accredited, the consent of the Prince who has sent him conveying no authority to grant it.

The sacred and inviolable character of an Ambassador has been admitted amongst civilized nations from the earliest times, but the extent of his immunities has divided Jurists in opinion, but now in theory the immunity of the Ambassador's house is regarded as founded upon special concessions on the part of the sovereign to whom the Ambassador is accredited, and sometimes as in England these are expressed in Acts of the Legislature (7 Ann, c. 12), although in this case the representations of the different Ambassadors then in London prevailed so far to have the immunity expressly declared as justified by the Jus Gentium.

At one time it was insisted that the immunity to an Ambassador extended to his house and to those who fled to it. At a previous date a far wider claim had been urged, viz.—to the vicinity or to the quarter of the town in which he resided; at Rome this privilege was abolished by Pope Innocent XI., and in 1682, the Spanish Ambassador renounced all right to claim the immunity even for his

house. His example was followed there by the English Ambassador in 1686. Portugal, Sweden, Denmark, and Venice abolished by express ordinance the asylum for the Ambassador's house in 1748. Thus the Ambassadors' right to give asylums was abolished by legitimate means. One consequence was that his hotel was more respected and no longer provoked positive attacks from without, for previously, instances occur of criminals, who had taken refuge in the houses of Ambassadors, having been torn from them even by force of arms. The Spanish Government took with violence the Duke of Ripperda out of the hotel of the English Ambassador in Madrid, A.D. 1726, although the court of St. James' had sanctioned his reception there. Some Venetians who had been seduced to betray state secrets to the French Ambassador, fled for safety to the hotel of the Embassy, but the Senate sent troops and cannon to storm the hotel, and so forced the Ambassador to deliver them up.

This aforesaid Act as amended recites that turbulent persons had in a most outrageous manner insulted the person of His Excellency Andrew Artemonowitz Matueof, Ambassador Extraordinary of "His Czarish Majesty, Emperor of Great Russia, Her Majesty's good friend and ally," by arresting him and taking him by violence out of his coach in the public streets, and detaining him in custody for several hours, in contempt of the protection granted by his Majesty, *contrary to the law of nations and in prejudice of the rights and privileges which Ambassadors and other public*

ministers authorized and received as such, have at all times been possessed of and which ought to be kept sacred and inviolable; and then the Act proceeds "that all actions and suits and writs of process against such Ambassador shall be null and void, and so also against his domestic servant, and all men so prosecuting and after conviction shall be deemed violators of *the law of nations*, and shall be liable to pains, penalties and corporal punishment, according as certain judges of the superior courts shall think fit, but no merchant or trader subject to the bankruptcy law, who should put himself in the service of the Ambassador, and no servant unless he is registered as the Act directs shall be entitled to such privilege." Whilst this Act was still in the form of a Bill, it appears to have been communicated to the Imperial and Spanish Ambassador, Count Gallas, who laid it before the Prussian Ambassador, Baron Spanheim, at whose house met the other Ambassadors then in London; these thought that the draft should not be confined to the case of the Russian Ambassador, but refer generally to the rights of *Ambassadors and public officers authorized and received as such, which right they had at all times, they said, been possessed of and which ought to be kept inviolable*; and accordingly corresponding words were inserted and the Act was passed. The Ambassadors had urged also other clauses as proper to be inserted *i.e.*, *that* insults to these Envoys should be made a criminal offence, *that* their equipages and other effects of what nature soever ought to enjoy the same protection with their persons and

servants, and not be seized or stopped on any pretence, that their houses ought to be declared sanctuaries, and no Bailiffs or other officers of justice allowed to enter the same. But the committee would not admit any of the suggestions except that first mentioned, which in effect rendered their Act as to its clauses declaratory simply of certain rules of the law of nations. The Bill contained a clause against which the Ambassadors protested as never having been the practice *i.e.*, that no one should be proceeded against for having arrested the servant of an Ambassador or public servant, unless the servant's name had been registered in the manner which the Act prescribed.*

Another kindred institution and the one which showing the greatest vitality at the present day, and promising a history in the future is that which claims the right of one state to shelter offenders from another state. Such claims except where the offences are purely political, are almost universally amongst civilized nations governed now by special treaties of extradition. The subject is too extensive to be dealt with here, but, being of great interest, is

* See Rapin and Tindall, vol. 4, p. 119, whence it appears that the matter did not rest until Queen Anne had made solemn excuses for the insufficiency of our previous laws, which was accordingly done by the Queen's Envoy Extraordinary, Mr. Whitworth, on her behalf whose excuses for the affronts the Czar accepted, condoning the criminal proceedings against the authors of the affronts and desiring these to be discharged, but not until all costs and damages on account of the affront had been reimbursed, &c.

illustrated by an extract from a recent foreign treatise printed in the appendix.

Sanctuary privileges were not accorded always freely, and as of course or without reference to the antecedents of the fugitive, or without supervision for the most part of his conduct during his abode in sanctuary.

To the more heinous crimes the Church immunities were distinctly forbidden, departing in one particular from the humaner provisions of the Mosaic law, which included the strangers and sojourners within the gates. The Church immunities were denied to all except christians. Refugees were required to confess and to take an oath to observe strictly the rules and regulations laid down for the sanctuary. Sanctuary men were required to observe the regulations of the sanctuary, but it is evident that they did not always do so either in St. Martin's-le-Grand, or at Westminster, as appears from the petitions to Parliament to which their outrages led. The same probably was the case elsewhere. But these instances can be regarded as exceptions.

And it has been rightly observed with reference to the usage of our Saxon ancestors, that as amongst them, every offence with a single exception was redeemable by a pecuniary fine, their sanctuaries in their original intention afforded only temporary refuge until the arrangement could be carried out.

After all, these sanctuaries gave no absolute immunity from punishment, but from loss of life, and injury to limb, for

the fugitive had to go into voluntary exile and as a pauper, because his property he had forfeited by his abjuration; he had in the mean time to remain in confinement. Later by a statute of Henry 8, the sanctuary man on abjuration had to submit to be branded besides with a red hot iron, as one who had abjured the realm. The holy place became in effect a reformatory or a gaol, according as the fugitive had either obtained pardon from the King, or in special cases immunity from his enemy or creditor, or until he submitted to the ultimate fiat of perpetual banishment. This was according to the general practice of Church sanctuaries. But there were besides, as we have seen, places specially privileged, where the sanctuary man as he was called had advantages of a more extensive and less excusable description.

There being then two classes of sanctuaries in England, or rather two classes of sanctuary immunities *i.e.* those more especially having their origin from the Church, and those which were granted by royal charters, it is easy to see that different theories would be adapted with respect to their interpretation. The theory of the Church was that all consecrated ground is holy and inviolable, that the Church is the judge who shall avail himself of its immunities; the Church, it was added, is the party to put the offender out, the hand of the secular power is inoperative so long as the sanctuary is accorded by the Church or its priest. The theory proceeds upon the Mosaic and Levitical law, explained by the

necessary imperfection of human justice, or upon the necessity of deferred judgment for calmer decision. Both systems proceeded also upon a principle of mercy to offenders.

The theory of the law on the other hand may be considered to have been somewhat like this:—no law can foresee all possible cases or appreciate the motives which justify or extenuate the guilt of actions. Human nature is weak to form a correct view upon the subject of charging a particular offence upon a particular individual, and equally so of apportioning punishment to an ascertained offence. In these matters the best of judges have erred not seldom. It is not right to permit always hasty and irremediable executions to follow upon the mere suspicion of a crime. Such were these two theories. Again, the Church and the law in upholding the system gave effect to the inviolability in different manners, for whilst the Church attached the inviolability to the holy place, the law attached it rather to the person who sought refuge in a specified place, irrespectively of religion. Both systems in unequal proportions proceeded upon a principle also of mercy to offenders which in the case of the royal charters may be considered as an attempt to perpetuate the prerogative of pardon.

In the earlier cases the practices of the two systems were much confounded, the influence of the Anglo-Saxon laws was still felt under the subsequent dynasties, and those laws had declared that he, who was in the Church's

peace should be in the King's "mund" or guardianship, but just before and during the century which followed the reformation a greater extension had been attached to sanctuaries of the secular or mixed kind, such as those known by such names as the Whitefriars, and Fulwood rents.

With respect to the uses of this institution, we have especially to consider the exigencies of the different order of men who took advantage of its immunities. In one of the publications of the Surtees Society we have annotations by the editor, helping us to class them. But a still more general classification suffices. They were mainly men accused as robbers, thieves, homicides, debtors or traitors, including political partizans. All indeed fall within the justification of the theories already adduced, but the last have reasons in their favor peculiarly their own. The place occupied in our annals by the historical personages who availed them of the great sanctuaries at Hexham, Durham, Beverley, Beaulieu, and Westminster is very considerable. Reducing all the classes to three, we have those accused of common and vulgar crimes, those accused of state offences, and those debtors whose misfortune was their only guilt, and we can easily see what an innocent man would in these classes have to contend with, the incapacity of ignorant or corrupt judges in all three, the hard heartedness of the prejudiced creditor, and that bitter hatred in the last case which is rarely not engendered by the clash of political parties and party interests.

Human laws at the best are imperfect, if not in their essence, at least by reason of their generality. Of the former class are systems emanating from the will of individuals in the infancy of a nation. Society little by little gets rid of those causes of imperfection, whereas the imperfection arising from their generality must, it is admitted, accompany every system or code of laws. Immunities suppose the law deficient, and the right to sanctuary was such as immunity.

CHAPTER VII.

GENERAL REFLECTIONS AS TO SANCTUARIES.

There are several things then in estimating the value of those institutions which should not be lost sight of:

First.—That they flourished and were at the height of their influence only in barbarous times, or in ages of defective legislation and of a low state of civilization.

Secondly.—That the more the administration of the laws improved, and the less imperfect was the system of laws which they had to administer, the fewer the instances of the resort to sanctuaries.

Thirdly.—That sanctuaries if they in particular cases erred, erred on the side of mercy, and that they were only so far authorized encroachments upon the royal prerogatives of pardon which had always existed.

Fourthly.—That sanctuaries, *i.e.*, immunities similar to them, exist even at the present day to a greater or less extent; for what shall we say else of the Ambassador who with his family and servants is protected from process of law or the British man-of-war, which will not unconditionally surrender, even in foreign ports of countries with which we are in amity, the slave who has taken refuge on its deck?

Lastly.—What shall we say to the immunities to which

our homes are entitled during night, except in cases of the greatest crimes, when pre-eminently every man's house is his castle, and his sanctuary, in which no writ of procedure can be executed?

Again we should not forget that the criminal who took sanctuary did not escape punishment, he had to abjure the realm, forfeit his goods and submit to life long banishment, and by a statute of Henry 8, he was to be branded likewise. More rightly may the result be regarded as commutation of punishment.

In one respect however, in rude ages the sanctuary performed an office that deserves all commendation. Where the offence imputed was doubtful, it substituted as judge or arbitrator, learning for ignorance, coolness for passion, impartiality for prejudice, and where the offence was undoubted the sanctuary mitigated the ferocious punishment by replacing the capital punishment by banishment and forfeiture. How many innocent lives it saved, who shall count? How many guilty souls that would otherwise have been sent headlong to their last account, and yet whose demerits may have fallen short of such a penalty, it preserved from an inappropriate doom, we cannot pretend to say. To aid us in forming some judgment upon the subject, I will enter into a few brief details.

We know from our statute book and from the page of history, that the long civil wars in England had left behind a social condition far from satisfactory. The expression of Latimer is well known, "two acres of hemp

sown up and down England were all too little to hang the thieves in it."

Erasmus, when resident here, continually complained of robberies. But the subject painfully connects itself with my subject by a letter of Peter Martyn, dated 19th May, 1513, and calendared amongst the state papers of the reign of Henry 7, by Mr. Brewer (No. 4096), "Jo Stile, told him that a band of robbers had attacked the King's wagons carrying money to the wars, and afterwards fled to sanctuary, *but the King caught eighty of them before they could escape and hanged them all.*"

In comparing the statements made by Stow as to executions between the years 1509 and 1547, this is thirty-eight years of the reign of King Henry 8, with the accounts of criminals executed in the years 1857 to 1866 inclusively, we find taking averages of years, that nearly fourteen times as many men were executed in each of those years of Henry 8, as in the years of Queen Victoria, but if we estimate the population of England as seven times only greater in the nineteenth century, than it was in the sixteenth century, then further, in the comparison of these two periods as to the capital executions which took place in them, not merely fourteen times but ninety-eight times as many prisoners were executed in the Tudor period, that is, after the right to sanctuary had been greatly disturbed by legislative measures, and the offenders who might have otherwise availed themselves of it had been rendered amenable in the ordinary way to criminal process!

It was easy to see that things had reached a crisis calling for the serious changes, the steps in which have been particularized in the first chapter. No doubt in the law of sanctuaries in this country there had been much to which the axe of the reformer might well be especially applied, abuses that had arisen from the mistaken zeal of the clergy, anxious not only to uphold the dignity but to extend the privileges of the Church, or from the selfish and unscrupulous policy of sovereigns and powerful men, who sought to render sanctuaries a kind of depot for military recruits, and use them as the means of replenishing the rapidly exhausted ranks of an army on a frontier continually at war, as in early times in the dominions of the Earl of Chester, or in a territory surrounded by irreconcilably offended enemies as on the Scottish borders, or on the continent as at Rome.

How much, in the earlier part of King Henry the 8th reign, reform in these matters was in the minds of all, appears not only from the arguments attributed by Sir Thomas More to the Regent's Council, and the envoys to the Queen in the sanctuary at Westminster, but from the interesting letter of a contemporary on one Thomas Dorset, about the date of 1535, which is preserved in the Cottonian MSS (Cleopatra E. 14, f. 110), and is addressed to the "Right Worshipful Mr. Horsewell, Maiour, Mr. Hawkyns, and Will. Aishrygh of Plinmouthe, by their boundin and beholdyn Thomas Dorset, curate of St. Margaret in Lothbury, who sendith greeting and good helth in the

Lord Jesus Christ, Amen." After saying how he went in a wherry to Lambeth to hear news, and how he was present at the examination of Dr. Crewkehorne before three dignitaries of the Church, viz.—Cranmer, Archbishop of Canterbury; Short, Bishop of Worcester; and Latimer, Bishop of Salisbury, he concludes with the following statement of the royal suggestions, as to the urgency of legislative measures:—"On Saturday in the Ember week, the King's grace came amongst the burgesses parliament, and delivered them a bill, and bade them loke upon it and waye it in conscience, for he would not, he said, have them pass it or any other thing, because his grace giveth the bill, but to see yf it be for a comyn wele to his subjects, and have an eye thetherwarde. And on Wedynsdaye next he will be there engaged to here their myndes. There shall be a proviso made for poor people. The guileless shall be rid, the faulty shall die, and the others shall be acquitted by proclamation or by jury, and shall be set at liberty and pay no fees; and sturdy beggars, and such prisoners as can not be set at work, shall be set at work at the King's charge, some at Dovor, and some at the place where the water hath broken in on the lande, and other mo (more) places. Then if they fall to idleness, the idle shall be had before a justice of the peace, and his fawte written, then, if he be taken idle agayne in another place, he shall be knowne (ascertained where is dwelling is) and so at the second mencyion he shall be burned in the hand, and if he fayle the third time, he shall die for it. This

said a burgis of parliament." * * * Men said that the sayntury shall, after this settying of the Parliament, hold no man for dett, murder, nor felony, nor for any other cause, nor Westminster, nor St. Martin's, nor St. Katerin nor any other sanctuary. Other fears know I none, as knoweth our Lord, who ever kepe us all. Written in haste, this 13th day of March, by your own to his littel power."

Still the impending change was regarded by some with apprehension. A bishop at the time of the dissolution of the religious houses placed himself valiantly in the breach for Hexham, which, it appears, had stood fugitives in good stead in the debateable ground on the borders of Scotland and England. "What he said, will fugitives there do without Hexham?"

Before we destroy we should at least consider and weigh what we propose to do, lest in pruning the luxuriant or decayed, or diseased branches, we lop not those that bear precious fruit. The legislators of the sixteenth and seventeenth centuries in interfering with chartered sanctuaries, did not approach their work with due calmness or exact discrimination, after a period of vacillation, of partial reform, and of re-enactments, they cut away the entire tree; with what result? There was no longer any distinction between the dishonest and the unfortunate debtor. The quality of a political offence or of a criminal Act was left to the harsh letter of an undiscriminating, often a cruel and barbarous law, and the innocent and the guilty were alike confounded in the penal consequences of the imputed

crime. Even, where the offence was clear, there was no longer the merciful privilege of the sanctuary which could interpose to mitigate the excessive or disproportioned penalties attached by the law to a conviction.

APPENDIX.

Page 6.—*Asyla in Greece and Rome—Bulmerincq compares these as follows:*—A feeling of humanity gave birth to the Asyla of the Greeks, but soon these places came not only to shelter the unfortunate whom revenge pursued, or him whose act was involuntary, but to withdraw the criminal from the punishment already suspended over his head. A sanctuary opened to debtors and even to robbers in consecrated places looks like a privilege, tending to jeopardize the right of property, whilst the withdrawal of gross offenders, such as murderers from the punishment of death, seems a shameful proceeding, protecting even the condemned from a righteous judgment. The wisdom of the Athenians soon brought them to the conviction that the kernel of the institute lay in the protection of the wretched, and not in extending a helpful hand to guilt. More generally in Greece however, the characteristic was the perpetuation of a state of lawlessness, by the consecration of a caprice, and the protection of crime, so their law of Asylum hurt the law itself, and they even sought to justify it; whereas the more enlightened amongst them, where society had attained higher developement, as at Athens, recognized the misuse and sought to limit it. Abolish it they dared not; for it was a divine law. Consequently it may be said that in its origin the privilege amongst the Greeks was a beneficent institution, afterwards a fount of evil, when the states as in the flourishing era of Athens had become ordered, and no longer required the shelter of Asyla. Again they proved beneficent, when party struggles had subjected Athens to the absolute will of a chief. Materials are wanting to judge nicely how it was elsewhere in Greece, but at an early period of their history, the Athenians had drawn a sharp line of separation between the homicide that was premeditated ('ek pronoías), and that which was not so ('akousios). No Asylum was necessary in the latter case as amongst the Israelities. The punishment for it was, as amongst the Israelites, banishment The exile's return or not depended upon the will of the deceased's kinsmen, whereas amongst the Israelites, not even the blood avenger's permission could reinstate the fugitive before the fixed term, viz —the death of the high priest; as we should say

the Jewish law insisted upon the public offence, whereas the Greek law regarded principally the injury to the family ; this looks like the general law of the barbarian which admitted of the wehr-geld or compensation. We have a striking instance of this, in the composition awarded to Edward the Confessor, from Earl Godwin, by the decision of the council for the death of his brother Edwin. The murderer in Greece might always indeed save himself from capital punishment by a voluntary banishment for life. The debtor also might always satisfy his creditor by abandoning to him his property, but probably oftener thought it more advantageous to free himself entirely from payment, by fleeing to an Asylum. The slaves did not so much need its privilege, for not only had they their own belongings, but the relations in which they stood to their masters subjected both to reciprocal obligations. The life of a slave was not at the disposal of his master, nor was he subject to ill-treatment at his master's hands, or at the hands of others. The law was above both classes, and the slave but needed the Asylum to obtain freedom, which he might obtain either by purchase or a gift.*

So that the privilege was hardly necessary either to slave or debtor amongst them. The law was a mild one : whereto would have served an Asylum or the resource of voluntary exile? The answer is at hand, the avenger of blood was still there too, and the Asylum gave his quarry time to breathe, and himself time for reflection. Thus it appears that after military conquest had ceased to entail the death of the conquered, the fact of the avenger near at hand is the only justification of the Asyla amongst the Greeks. Later however when the time of public confusion was again there, when Athens had fallen and the rest of Greece ceased to be independent, then, just as in the infancy of Greece the might of the heroic period had done, the crash of states again set up the institute of the Asyla, awakening them to full energy again, and making them shields against oppression.

At Rome it was different, the Asyla, with the Romans, sanctified at first also the crime, and withdrew the fugitive criminal from his well merited punishment. Their government could not leave matters in this state ; when it was once convinced of the evil of the misuse, Roman legislation built up a worthier system for the Asyla. These were still to afford protection to the oppressed, not however unconditionally, *i.e.*, they did not operate, *ipso jure*, immunity from punishment and farther

* Compare Francesco Forti Istituzioni Civil. ed.

prosecution, but became only a ground for a formal inquisition, terminating with a judgment resting upon the ground of ascertained facts.

The misuse had been recognized of old, for Tacitus tells us that the senator Caius Cestius, in the time of Tiberius, gave expression to the sentiments of many, when he said "that Princes were like Gods, and did not listen to the prayer of supplicants unless they were just, nor does any fugitive take refuge in the Capitol, or in the other temples at Rome in order to use them for the perpetration of flagitious deeds."* Words which we may suppose to echo the opinion entertained by Romans of the higher class as to the legitimate object of the Asyla. Thus the Romans never abolished the Asyla, the institution remained in their eyes a holy one worthy of the Gods, but it is abundantly evident from the ordinances of their Emperor, that it was considered that the privilege should support, not abrogate the law, and that the due ordering of the state and a reverence for the law demanded punishment on the one hand for evil doers, and on the other protection for the unfortunate only. In order however that an examination into the complaints of the fugitives might be proceeded with, the Asyla were there, and were invested with unconditional authority without other aid for their protection. He that fled in opposition to the law, found no protection and had to succumb to the law; in spite of the privilege having been misused, this had led to the perfection of the system, so that it has been rightly affirmed, that the Roman system did not remain standing on the same level as that of Greece, but became part, through appropriate provisions, of the general system of jurisprudence, and received a higher development thereby, a development, which in Greece had only been the case at Athens in its flourishing times and in the case of some other petty nationalities.

Page 35.—*Neander's Church History.*—"As the Pagan temples had been already considered Asylums for such as fled to them for refuge, and as the images of the Emperor served the same purpose, so this use passed over to the Christian Churches. It is evident how salutary a thing this might prove under the circumstances of those times; since refuge taken in the Asylum of the Church, particularly at the altar, afforded time for the bishop to intercede for the unfortunate before any injury could be done to them. They who were persecuted by a victorious party, in times of civil commotions, could, in the first

* Annals iii., 36.

instance, here find protection against the sword, and the bishops meanwhile gain time to apply to those in power for their pardon.

Many examples of this kind are furnished in the labours of St. Ambrose, during the revolutions of western Europe in his period. Slaves could find here protection *for the first moment*, against the cruel rage of their masters, and subsequently, by the interposition of the bishops appease their anger, and so the debtor involved by misfortune in debt, or persecuted by his creditors, could gain time, that pious bishops might through the subscriptions of the charitable, or by an advance of Church funds, cancel the debts or effect a compromise. This right *was at first* conceded to the Churches by a law, but had its ground in the *universal* belief, and hence too it happened that it was often violated by rude tyrannical men."

See supra p.p. 16, 20, 42 *and* 43.—Like the immunities in force as to debtors in the places in Cheshire, mentioned at pages 16—20, were those which existed in Holyrood. We are told that they had their parallel in Paris, in the street called La Truanderie, and another spot of evil repute named Cour des Francs Bourgeois.

The sanctuary removed first from Manchester to Chester, mentioned at pages 19—20, led Mr. Thomas Hughes to tell the Chester Architl. and Archæological Society in February, 1863, that before the sanctuary had been located three months in Chester, the Mayor and the other civic dignitaries had been despatched to London to secure its immediate removal, inasmuch as the city had become thereby the common resort of criminals of the worst description. At their instigation, Chester ceased to be a sanctuary town, and the distinction was thereupon transferred to Stafford. Here fugitives were then lodged in the gaol, this again led to royal interference, for King Henry 8 hearing that the sanctuary had been so placed without special authority,* wrote to the Sheriff of Staffordshire on the 3rd August, 34 Henry 8, as follows, Greeting.—By virtue of a certain Act of Parliament, and of our Proclamation respecting it, you have been advised that our town of Stafford within your bailiwick was a sanctuary town, and that felons, transgressors, and other malefactors flying thither would receive protection and privilege in it according to the form of the said Act and of the said Proclamation, as well as of the other statutes and laws of our realm of England concerning sanctuaries. Now whereas we have learnt by your own testimony and that of other trusty subjects, that our castle and gaol for prisoners taken or to be taken in your county

* See the Latin text of the King's letter supra p.p. 42—3.

is situate within the said town, and that a doubt has arisen whether the said castle or gaol is part or parcel of the sanctuary of the town aforesaid, know now that it is not nor ever was it our intention that the said castle or gaol should be, or reputed to be any part of the aforesaid sanctuary.

Pages 35, 43.—Drayton, antiquary, as well as Poet, furnishes us a stanza, realizing and bringing home to us the life in sanctuaries in the thirteenth and fourteenth centuries.

> Some few themselves in sanctuaries hide
> In mercy of that privileged place,
> Yet are their bodies so unsanctifide,
> As scarce their soules can ever hope for grace,
> Whereas they still in want and feare abide,
> A poore dead life this draweth out a space,
> Hate stands without and horror sits within,
> Prolonging shame, but pardoning not their sinne!
>
> *Warrs of the Barons.*

Pages 57, 65.—The circumstances detailed in the text, involving as they did magnates in England connected at once with the throne, the state, and the church, must have echoed throughout central and western Europe, and it is interesting to note the effect which they produced in Italy, in the contemporary narrative which follows, and which I borrow from an Italian MS formerly at Venice, in the library of the Abbate Canonici, and now in the possession of the Rev. Walter Sneyd of Keele. A translation of this narrative from the pen of a lady, a member of the same gentleman's family, was published by the Camden Society in 1847. It bears the following title:—"A relation, or rather a true account of the Island of England, with sundry particulars of the customs of these people, and of the royal revenue under King Henry 7, written about the years 1500 or 1497." The name of the author is unknown, but he is from intrinsic evidence conjectured to be a nobleman, who accompanied perhaps as secretary the Venetian Ambassador to the court of Henry 7.

This is the foreigner's account of what he was eye witness to in England, he says, "the Clergy are they who have the supreme sway over the country both in peace and war. Amongst other things they have provided that a number of sacred places in the kingdom should serve for the refuge and escape of all delinquents; and no one, were he a traitor to the crown or had he practised against the King's own person, can be taken out of these by force, and a villain of this kind, who for some great excess that he has committed, has been obliged to

take refuge in one of these sacred places, often goes out of it to brawl in the public streets, and then returning to it, escapes with impunity for every fresh offence he may have been guilty of. This is no detriment to the power of the priests, nor to the other perpetual sanctuaries; but every Church is a sanctuary for forty days, and if a thief or murderer who has taken refuge in one, cannot leave it in safety during those forty days, he gives notice that he wishes to leave England, and in this case being stripped to the shirt by the chief magistrate of the place, and a crucifix being placed in his hand, he is conducted along the road to the sea, where, if he finds a passage he may go with a "God speed you!" But if he should not find one, he walks into the sea up to the throat, and three times asks for a passage, and this is repeated till a ship appears, which comes for him and so he departs in safety. It is not unamusing to hear how women and children lament over the misfortunes of these exiles, asking "how they can live so destitute out of England," adding moreover that "they had better have died than go out of the world, as if England were the whole world." And notwithstanding all these evasions, people are taken up every day by dozens, like birds in a covey, and especially in London, yet for all this they never cease to rob and murder in the streets."

Page 71, *Note.*—Since that passage was written I have found it to be literally translated from the Latin text of a passage at page 58, in the interesting early MS, called the Liber Vitae, published in 1841, by the Surtees Society. On the previous page there a "Godfrid" heads the list in the book of life. So that either he is another person, or there were two sides to the quarrel.

As long, says Guizot, as the anarchy of invasion lasted in the centuries which preceded in some measure the regular establishment of the feudal regime, the protection of a church or of a convent was almost the sole force from which the lesser proprietors could hope for any security. These sought to obtain it by endowments. The Churches were "Asyla," and as such were enriched in recompense for a refuge obtained, or hoped to be obtained.*

Page 80. *Mr. Wright furnishes us with the following, in his Archæological Album, at p.* 122.—The early registers of Tournay afford a curious anecdote. "In the month of September, 1346, a manufacturer of metal pots in that city, named Pierre de Bruges, had contrived an engine called a conville (canon), "to shoot into a town when it should be besieged," and the *Consul* of the city ordered one, promising

* Essais sur l'histoire de France. Quatrieme essai, ch. 1, s. 1.

if it answered that he should be employed to make several others. Pierre de Bruges made the "conville," and for the satisfaction of the municipal authorities, it was carried out of the city to be tried. Pierre loaded his machine, placed in it a dart, with a piece of lead weighing about two pounds at the end and took aim at a postern in a part of the city wall. The engine went off with a "cruel" great noise, but the maker appears to have so far underrated its strength, that, instead of striking the wall, it went right over it, and traversed a large portion of the city, and in the place before the Monastery called St. Brice, it struck a fuller, Jakeman de Raipe, on the head and killed him on the spot. When the inventor heard this, he took refuge in a sanctuary. The magistrates of the city, however assembled, and after long deliberation, came to a determination that—considering the machine had been made and tried by their own orders, that Pierre de Bruges, the maker, had aimed at a wall and not a man, and as it was proved that he had no personal enmity to Jakeman de Raipe, he should be entirely acquitted of the death of the said Jakeman, which could only be considered as purely accidental."

Page 90. *Modern Sentiments upon the subject of sanctuaries. Hallam Middle Ages, c. ix., part* 1, *vol.* 3, *p.* 351.—"Under a due administration of justice, this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the middle ages, the right of sanctuary might as often be a shield to innocence, as an impunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that there should have been some green spots in the wilderness, where the feeble and the persecuted could find refuge. How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighbourhood to those venerable walls, within which not even the clamour of arms could be heard, to disturb the chaunt of holy men, and the sacred service of the altar."

Dean Stanley in his memorials of Westminster, p. 414, has these words:—"The sanctuaries of mediæval Christendom may have been necessary remedies for a barbarous state of society, but when the barbarism, of which they form a part disappeared, they became almost unmixed evils; and the national school, and the Westminster hospital which have succeeded to the site of the Westminster sanctuary, may not unfairly be regarded as humble indications of the

dawn of a better age." And see ibid. at p. 642, the argument of Feckenham, Abbot of Westminster, on the 10th February (1555), against the suppression of the sanctuary at Westminster. The German writer, to whom I have more than once referred, apparently wrote his treatise [Das Asylrecht: Dorpat, 1853] mainly with the intention of enforcing his views upon a subject which has of late times been much before the public, viz.—extradition. In doing this he thought it right to begin by showing the development of the right to Asylum from the earliest period. Without entering into the details of his treatise, or showing his particular conclusions for which I refer to his own work, I close my own remarks here by his analysis of its contents. He divides then, I say, his treatise into two parts, the *former part* comprising the historical development of the institution, the *latter part* considering it with reference to the extradition of fugitive criminals. The *former part* in its *first section* contains three chapters and treats of the Asyla from the Christian era. The first chapter shows them as then they were amongst the Israelites, the second chapter as then they were amongst the Greeks, and the third chapter as then they were amongst the Romans. In a *second section* the author considers the institution as it was in Christian times, and this in two chapters, treating in chapter 1, of the *Church Asyla*, and in chapter 2, of those of *secular* origin. The *third section* concludes the *first part* with a short enumeration of the different forms in which the privilege has appeared, and follows the pursuit of the right in a state. The *second part* (the last) has three chapters devoted to show the international import of the Asylum, as affecting the extradition of fugitive criminals. The author in his first chapter treats of the pursuit of justice beyond the limits of the state and its grounds; the second chapter treats of extradition as viewed with reference to the general principles of jurisprudence, and the third chapter as viewed with reference to the received principles of the law of nations. "This system" he tells us "which was created to furnish nations with rules for use, would be hardly serviceable to the law without the recognition of a distinction between good and evil, and between right and wrong, could never order the breaker of the law to be left unpunished. The law of nations itself is under the law, revealed by God, which he has summoned mankind to fulfil. God's law tells us that the sovereignty of the sword is not given in vain. The representatives and custodians of the law of nations are authorities appointed by God himself, and God himself directs the punishment, just as he once gave protection to the innocent by his free cities. The

law must be completed according to the divine will, to work this out is the undeniable and absolute duty of all, and this applies to the "*jus gentium*" as much as to every other law. Where justice exists, law reigns, and law enjoins that its prescriptions shall be carried out and realized; such realization being the object of all law, and of every system of jurisprudence."

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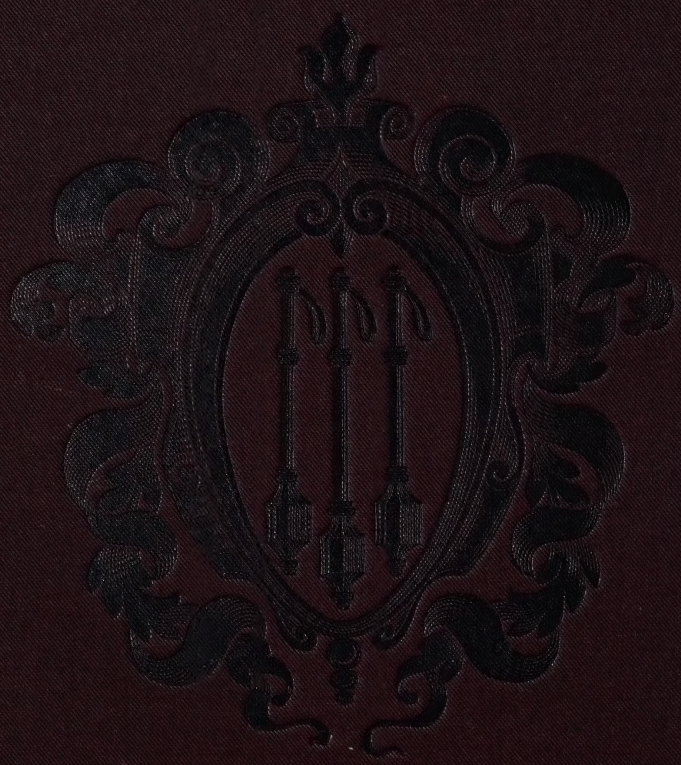
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